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2d Session
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REPORT
No. 94-1479

RAIL AMENDMENTS OF 1976

REPORT

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE U.S. HOUSE OF REPRESENTATIVES

together with

SEPARATE VIEWS

(Including cost estimate and comparison of the Congressional Budget Office)

ON

H.R. 14932

SEPTEMBER 8, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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SEPTEMBER 8, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

together with

SEPARATE VIEWS

[Including cost estimate and comparison of the Congressional Budget Office]

[To accompany H.R. 14932]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 14932), to amend the Regional Rail Reorganization Act of 1973, the Railroad Revitalization and Regulatory Reform Act of 1976, the Rail Passenger Service Act, and the Interstate Commerce Act, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act, divided into titles and sections according to the following table of contents, may be cited as the "Rail Amendments of 1976".

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TITLE I—AMENDMENTS TO THE REGIONAL RAIL REORGANIZATION ACT OF 1973

ADEQUATE REPRESENTATION

SEC. 101. Section 205(d)(7) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 715(d)(7)) is amended to read as follows:

"(7) employ and utilize, until such time as the Director of the Office of Rail Public Counsel has been appointed and confirmed and has taken office, the services of attorneys and such other personnel as may be necessary (A) to protect properly the interests of those communities and users of rail service which, for whatever reason (such as size or location), might not otherwise be adequately represented in the course of the reorganization process under this Act, and (B) to perform, pursuant to section 27 of the Interstate Commerce Act (49 U.S.C. 26b), the functions and duties of the Office of Rail Public Counsel.

The funds authorized to be appropriated to the Office of Rail Public counsel by section 27(6) of the Interstate Commerce Act (49 U.S.C. 26b(6)) are authorized to be made available for purposes of carrying out the provisions of paragraph (7) of this subsection.".

DEFICIENCY JUDGMENT PROTECTION

SEC. 102. (a) Section 206(d)(5) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(d)(5)) is amended by adding at the end thereof the following new sentence: "Except as otherwise provided with respect to the Corporation pursuant to section 303(c)(2) of this Act, the Corporation, its Board of Directors, and its individual directors shall not be liable to any party, for money damages or in any other manner, solely by reason of the fact that the Corporation transfers property to the National Railroad Passenger Corporation, or to any State (or any local or regional transportation authority), pursuant to section 303 of this Act, to meet the needs of commuter or intercity rail passenger service.".

(b) The first sentence of section 303(c)(5) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 743(c)(5)) is amended to read as follows: "Whenever the special court, pursuant to subsection (b)(1) of this section, orders the transfer or conveyance of rail properties—

"(A) designated under section 206(c)(1) (C) or (D) of this Act, to the Corporation or any subsidiary thereof, the United States shall indemnify the Corporation against any costs or liabilities imposed on the Corporation as the result of any judgment entered against the Corporation, with respect to such properties, under paragraph (2) of this subsection; and

"(B) to the National Railroad Passenger Corporation, a profitable railroad operating in the region, a State, or a responsible person (including a governmental entity), the United States shall indemnify the National Railroad Passenger Corporation, such profitable railroad, State, or responsible person against any costs or liabilities imposed thereon as a result of any judgment entered against the National Railroad Passenger Corporation, such profitable railroad, State, or responsible person, as the case may be, under paragraph (3) of this subsection,

plus interest on the amount of such judgment at such rate as is constitutionally required.".

EXPIRATION OF OPTIONS

SEC. 103. Section 206(d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(d)) is amended by adding at the end thereof the following new paragraph:

"(7) Any option which is conveyed to the Corporation by a railroad in reorganization, or a railroad leased, operated, or controlled by a railroad in

reorganization, with respect to the acquisition by the Corporation, on behalf of a State or a local regional transportation authority, of rail properties designated under section 206(c)(1)(D) of this title, shall be deemed to remain outstanding and in effect until 7 days after the date of enactment of the Rail Amendments of 1976, notwithstanding any contrary provision in such option. The exercise by the Corporation of any such option shall be effective if it is made prior to the expiration of such 7-day period and in the manner prescribed in such option.".

LOANS FOR PAYMENT OF OBLIGATIONS

SEC. 104. (a) Section 211(h)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(h)(1)) is amended to read as follows:

"(h) LOANS FOR PAYMENT OF OBLIGATIONS.—(1)(A) The Association is authorized, subject to the limitations set forth in section 210(b) of this title, to enter into loan agreements, in amounts not to exceed, at any given time, $300,000,000 in the aggregate principal amount, with the Corporation, the National Railroad Passenger Corporation, and any profitable railroad to which rail properties are transferred or conveyed pursuant to section 303(b)(1) of this Act, under which the Corporation, the National Railroad Passenger Corporation, and any profitable railroad entering into such agreement will agree to meet existing or prospective obligations of the railroads in reorganization in the region which the Association, in accordance with procedures established by the Association, determines should be paid by the Corporation, the National Railroad Passenger Corporation, or a profitable railroad, on behalf of such railroads in reorganization, in order to avoid disruptions in ordinary business relationships. Such obligations shall be limited to—

"(i) amounts claimed by suppliers (including private car lines) of materials or services utilized or purchased in current rail operations;

"(ii) claims by shippers arising from current rail services;

"(iii) payments to railroads for settlement of current interline accounts and all other current accounts and obligations;

"(iv) claims of employees arising under the collective-bargaining agreements of the railroads in reorganization in the region and subject to section 3 of the Railway Labor Act (including claims for accrued vacation and wages and similar claims arising in connection with labor and services performed);

"(v) claims of all employees or their personal representatives for personal injuries or death and subject to the provisions of Employers' Liability Act (45 U.S.C. 51–60);

"(vi) amounts required for adequate funding of accrued pension benefits existing at the time of a conveyance or discontinuance of service under employee pension benefit plans described in section 505(a) of this Act;

"(vii) amounts required to provide adequate funding for payment, when due, of claims deriving from membership in any employee voluntary relief plan which provides benefits to its members and their beneficiaries in the event of sickness, accident, disability, or death, and to which both a railroad in reorganization and employee members have made contributions; and

"(viii) amounts required to provide adequate funding for payment, when due, of medical and life insurance benefits for employees (whether or not their employment was governed by a collective bargaining agreement) on account of their service with a railroad in reorganization prior to the date of conveyance pursuant to section 303(b)(1), and for individuals who retired, prior to such date of conveyance, from service with a railroad in reorganization.

"(B) The Association shall make a loan pursuant to subparagraph (A) of this paragraph if, notwithstanding any other requirement of this subsection, it finds that the Corporation, the National Railroad Passenger Corporation, or a profitable railroad is entitled to a loan pursuant to section 303(b)(6), 504(e), or 504(g) of this Act, or if, with respect to an obligation referred to in subparagraph (A) of this paragraph, it finds that—

"(i) provision for the payment of such obligation was not included in the financial projections of the final system plan;

"(ii) such obligation arose from rail operations prior to the date of conveyance of rail properties pursuant to section 303(b)(1) of this Act and is, under other applicable law, the responsibility of a railroad in reorganization in the region, and a claim is presented to a railroad in reorganization or the Corporation within 2 years after the date of enactment of the Rail Amendments of 1976;

"(iii) the Corporation, the National Railroad Passenger Corporation, or a profitable railroad has advised the Association that the direct payment of such obligation by the Corporation, the National Railroad Passenger Corporation, or a profitable railroad is for services or materials, the furnishing of which served to avoid disruptions in ordinary business relationships prior to the date of conveyance of rail properties pursuant to section 303(b)(1) of this Act, or is necessary to avoid postconveyance disruptions in ordinary business relationships;

"(iv) the transferor is unable to pay such obligation within a reasonable period of time; and

"(v) with respect to loans made to the Corporation, the procedures to be followed by the Corporation, in seeking reimbursement from a railroad in reorganization in the region for an obligation paid on its behalf under this subsection, have been jointly agreed to by the Finance Committee and the Corporation, and the joint agreement provides—

"(I) for the Corporation to receive reimbursement from the Association for any expenses incurred in seeking reimbursement from any railroad in reorganization in the region for an obligation paid on its behalf under this subsection; and

"(II) for a joint stipulation of the exact procedures the Corporation must undertake to avoid the finding, referred to in paragraph (6)(A)(i) of this subsection, that it has not exercised due diligence.".

(b) Section 211(h)(2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(h)(2) is amended—

(1) by inserting immediately before the period at the end of the first sentence thereof the following: "and for the payment of only those accounts payable which relate to obligations of the estates identified in paragraph (1) of this subsection"; and

(2) by adding at the end thereof the following new sentence: "Nothing in this subsection shall be construed as permitting any district court of the United States having jurisdiction over the reorganization of a railroad in reorganization in the region to enjoin, restrain, or limit the Corporation, the National Railroad Passenger Corporation, or a profitable railroad from applying, to payment of the obligations of the estates identified in paragraph (1) of this subsection, amounts collected as (A) accounts receivable pursuant to this paragraph, (B) cash or other current assets identified pursuant to paragraph (3) of this subsection, or (C) proceeds of loans pursuant to paragraph (1) of this subsection. Any agency agreement executed prior to the date of the enactment of the Rail Amendments of 1976 shall be deemed amended to the extent necessary to conform such agreement or order to the provisions of this paragraph. Nothing in this paragraph shall be construed to affect any payment made prior to such date of enactment with respect to obligations other than those identified in paragraph (1) of this subsection.".

(c) Section 211(h)(4) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(h)(4) is amended by adding at the end thereof the following new subparagraph:

"(D) Any funds held in an escrow account by a railroad in reorganization on the date of enactment of the Rail Amendments of 1976 which are thereafter determined to be cash and other current assets of the estate for purposes of paragraph (3) of this subsection shall be applied as follows—

"(i) first, to the reduction of any outstanding loans to the Corporation by the Association, pursuant to paragraph (1) of this subsection, the proceeds of which were used to discharge obligations of such railroad in reorganization;

"(ii) second, to the Association to the extent of any such loans which have been forgiven pursuant to paragraph (5) of this subsection; and

"(iii) third, to the payment of any remaining obligations of such railroad in reorganization, in accordance with the provisions of the agency agreement entered into pursuant to paragraph (2) of this subsection.".

(d) Section 211(h)(5)(B) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721(h)(5)(B)) is amended by adding at the end thereof the following new sentences: "The Corporation, the National Rail Passenger Corporation, or a profitable railroad, as the case may be, shall, with respect to each direct claim for reimbursement pursuant to paragraph (4) of this subsection, file a proof of administrative expense claim with the trustees of the railroad in reorganization from whom reimbursement is sought. Each such proof of administrative expense claim shall set forth, by category and amount, the obligations of such railroad in reorganization which were paid pursuant to such paragraph (4).".

(e) The first sentence of section 210(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 720(b)) is amended to read as follows: "The aggregate principal amount (exclusive of interest or additions to principal on account of accrual of interest) of obligations issued by the Association under this section which may be outstanding at any one time shall not exceed $345,000,000.".

PROTECTION OF EMPLOYEES' PENSION BENEFITS

SEC. 105. Section 303(b)(6) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 743(b)(6)) is amended by striking out the period at the end of the last sentence thereof and inserting in lieu thereof the following: ", except that in any case in which the Corporation, on or after the date of transfer or assignment as provided by this paragraph, terminates in whole or in part any such plan, the benefits under which are not guaranteed under title IV of the Employee Retirement Income Security Act of 1974, the Corporation shall guarantee the payment when due of the accrued pension benefits provided for thereunder at the time of termination. The Corporation shall be entitled to a loan pursuant to section 211(h) of this Act in an amount required for the adequate funding of accrued pension benefits under all plans transferred or assigned to the Corporation in accordance with this paragraph (whether or not terminated by the Corporation.) For purposes of such section 211(h) and notwithstanding any other provision of Federal or State law, amounts required for such adequate funding shall be deemed to be expenses of administration of the respective estates of the railroads in reorganization, due and payable as of the date of transfer or assignment of the plans to the Corporation.".

BASIS FOR COMPENSATION

SEC. 106. Section 304(d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 744(d)) is amended by adding at the end thereof the following new paragraph:

"(4) No determination of reasonable payment for the use of rail properties of a railroad in reorganization in the region, and no determination of value of rail properties of such a railroad (including supporting or related documents or reports of any kind) which is made in connection with any lease agreement, contract of sale, or other agreement or understanding which is entered into after the date of enactment of the Rail Amendments of 1976—

"(A) pursuant to this section; or

"(B) pursuant to section 402 of this Act or section 17 of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1613),

shall be admitted as evidence, or used for any other purpose, in any civil action, or any other proceeding for damages or compensation, arising under this Act".

COLLECTIVE BARGAINING AND FELA CLAIMS

SEC. 107. (a) Section 504(e) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 774(e)) is amended by inserting immediately after the first sentence thereof the following new sentences: "Any liability of an estate of a railroad in reorganization to its employees which is assumed, processed, and paid, pursuant to this subsection, by the Corporation, the National Railroad Passenger Corporation, or an acquiring carrier shall remain the preconveyance obligation of the estate of such railroad for purposes of section 211(h)(1) of this Act. The Corporation, the National Railroad Passenger Corporation, an acquiring carrier, or the Association, as the case may be, shall be entitled to a direct claim as a current expense of administration, in accordance with the provisions of section 211(h) of this Act (other than paragraph (4)(A) thereof), for reimbursement (including costs and expenses of processing such claims) from the estate of the railroad in reorganization on whose behalf such obligations are discharged or paid.".

(b) Section 504(g) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 774(g)) is amended by adding at the end thereof the following new sentences: "Any liability of an estate of a railroad in reorganization which is assumed, processed, and paid, pursuant to this subsection, by the Corporation or an acquiring railroad shall remain the preconveyance obligation of the estate of such railroad for purposes of section 211(h)(1) of this Act. The Corporation, an acquiring railroad, or the Association, as the case may be, shall be entitled to a direct claim as a current expense of administration, in accordance with the provisions of section 211(h) of this Act (other than paragraph (4)(A) thereof), for reimbursement (including costs and expenses of processing such claims) from the estate of the railroad in reorganization on whose behalf such obligations are discharged or paid.".

EMPLOYEE DISPLACEMENT ALLOWANCE

SEC. 108. (a) Section 505(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(b)) is amended—

(1) In paragraph (1) thereof, by striking out "February 26, 1975" and inserting in lieu thereof "January 1, 1975";

(2) in paragraph (3) thereof, by striking out "February 26, 1975" and inserting in lieu thereof "January 1, 1975"; and

(3) in paragraph (4) thereof, by striking out "February 26, 1975" and inserting in lieu thereof "January 1, 1975".

(b) Section 505(b)(1)(B) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(b)(1)(B)) is amended by inserting immediately after "(B)" the following: "with respect to a protected employee who has been deprived of his employment,".

(c) Section 505(g) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(g)) is amended by adding at the end thereof the following:

"In addition, protected employees displaced as a result of an acquisition pursuant to section 206(d)(4) of this Act (which acquisition was consummated pursuant to section 508 of this title) shall, upon acceptance of employment offered by the Corporation, be entitled to the benefits of paragraphs (1) and (2) of this subsection.".

NONCONTRACT EMPLOYEES

SEC. 109. (a) Section 505(i)(2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(i)(2)) is amended by inserting immediately after the first sentence thereof the following new sentence: "Such resolution procedure shall be the exclusive means available to the parties for resolving such dispute, and any arbitration decision rendered shall be final and binding on all parties.".

(b) Section 505(i) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(i)) is amended by addding at the end thereof the following new paragraph:

"(3) Except as otherwise provided in this title, a protected employee whose employment is not governed by the terms of a collective bargaining agreement and who has been deprived of employment shall not, during the period in which he is entitled to protection, be placed in a worse position with respect to any voluntary relief plan benefits or preretirement benefits provided under any life or medical insurance plan, except that the level of benefits to which such an employee is entitled under this paragraph shall not exceed the level of benefits which is

afforded to the Corporation's active noncontract employees of comparable age, position, and level of compensation.".

(c) Section 505(b)(4) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 775(b)(4)) is amended by adding at the end thereof the following new sentence: "This paragraph shall not apply to any noncontract employee whose noncontract position has been abolished.".

EXEMPTIONS

SEC. 110. Section 601(b)(4) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 791(b)), is amended by striking out the third and fourth sentences thereof and inserting in lieu thereof the following: "Thereafter, the district court of the United States which has jurisdiction of the estate of any such railroad in reorganization at the time of such conveyance shall proceed to reorganize or liquidate such railroad in reorganization pursuant to such section 77, in accordance with a fair and equitable plan which complies with the requirements of such section, or such court may convert the proceedings into a bankruptcy proceeding pursuant to any other applicable section or chapter of the Bankruptcy Act, if the court finds that such action would be in the best interests of such estate.".

TECHNICAL AMENDMENTS

SEC. 111. (a) Section 211(h)(6)(A)(i) of the Regional Rail Reorganization Act (45 U.S.C. 721(h)(6)(A)(i)) is amended by striking out "paragraph (1)(E)" and inserting in lieu thereof "paragraph (1)(B)(v)".

(b) Section 303(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 743(c)) is amended—

(1) in paragraph (2)(A) thereof, by striking out "securities, certificates of value of the Corporation" and inserting in lieu thereof "securities and certificates of value";

(2) in paragraph (2)(A) thereof, by striking out "it has" and inserting in lieu thereof "they have";

(3) in paragraph (2)(B) thereof, by striking out "Corporation's securities, certificates of value" and inserting in lieu thereof "securities and certificates of value";

(4) in paragraph (2)(B) thereof, by striking out "other securities, certificates of value" and inserting in lieu thereof "other securities"; and

(5) in the fourth sentence of paragraph (3) thereof, by striking out "section 303(a)(2)" and inserting in lieu thereof "subsection (a)(2) of this section".

TITLE II—AMENDMENTS TO THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

OBLIGATION GUARANTEES

SEC. 201. (a) Section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831) is amended by striking out subsection (c) thereof and inserting in lieu thereof the following new subsection:

"(c) FULL FAITH AND CREDIT.—All guarantees entered into by the Secretary under this section shall constitute general obligations of the United States of America backed by the full faith and credit of the United States of America.".

(b) Section 511(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831(h)) is amended—

(1) in paragraph (1) thereof, by inserting "(A)" immediately after "secured", and by inserting immediately before the semicolon the following ", or (B) in the case of the rehabilitation or improvement of leased equipment, by the lease"; and

(2) by amending paragraph (5) thereof to read as follows—

"(5) the prospective earning power of the applicant, or the value or prospective earning power of any equipment or facilities to be improved, rehabilitated, or acquired (or any combination of the foregoing), is sufficient to provide the United States with reasonable security and protection in the event of default by the obligor, in the case of repossession by the holder of the obligation, or in the case of possession, purchase, or assumption of the lease by the Secretary, except that if the value or prospective earning power

of such equipment or facilities is equal to or greater than the amount of the obligation to be guaranteed, the Secretary may not, on the basis of the lack of prospective earning power of the applicant, find that the United States will not be provided with the reasonable security and protection referred to in this paragraph; and".

(c) Section 511(j) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831(j)) is amended to read as follows:

"(j) CONDITIONS OF GUARANTEES.—(1) The Secretary shall, before making, approving, or extending any guarantee or commitment to guarantee any obligation under this section, require the obligor to agree to such terms and conditions as are sufficient, in the judgment of the Secretary, to assure that, as long as any principal or interest is due and payable on such obligation, such obligor—

"(A) will not make any discretionary dividend payments, except as provided in paragraph (2) of this subsection; and

"(B) will not use any funds or assets from railroad operations for non-rail purposes,

if such payments or use will impair the ability of such obligor to provide rail services in an efficient and economic manner or will adversely effect the ability of such obligor to perform any obligation guaranteed by the Secretary.

"(2) An obligor shall not be restricted with respect to making dividend payments from its net income for any fiscal year, if such payments do not exceed—

"(A) when compared to the net income of such obligor for such fiscal year, the ratio which aggregate dividends paid by such obligor, during the 5 fiscal years prior to the granting of the earliest loan guarantee then outstanding under this section, bore to aggregate net income of such obligor for such period; or

"(B) 50 per centum of the total additions to the retained income of such obligor (computed on a cumulative basis and giving cognizance to dividends paid) during the period commencing with the fiscal year prior to the granting of the earliest loan guarantee then outstanding under this section,

whichever is greater.

"(3) The restrictions on the payment of dividends set forth in paragraph (1)(A) of this subsection shall not apply with respect to an obligation guaranteed under this section if, in the event of a default by the obligor, the Secretary would be subrogated to the rights of the lender under section 77(j) of the Bankruptcy Act.".

MIDWEST RAIL STUDY

SEC. 202. Title IX of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210; 90 Stat. 147) is amended by adding at the end thereof the following new section.

"SEC. 907. (a) The Secretary shall conduct a comprehensive study of freight transportation in the Midwest. Such study shall include, but not be limited to, a determination to the maximum extent feasible of the impact of changes in the capacity of the lock system of the Mississippi River and Illinois Waterway Navigation System upon—

"(1) railroad revenues, service, the ability to attract capital, and continued economic viability;

"(2) railroad branch lines;

"(3) continued capability to provide service;

"(4) shippers dependent upon rail service;

"(5) communities beyond the economic service area of the waterway mode; and

"(6) need for subsidies to railroads.

Such study shall also include a determination of the probable freight to be moved in the Midwest in the next 10 years and the next 25 years, and the most economically efficient method of moving such freight, considering the total private and public costs for the entire region.

"(b) The Secretary shall, within one year after the date of enactment of the Rail Amendments of 1976, submit to the Congress the study required by subsection (a) of this section. The Secretary of the Army and the Commission shall cooperate with the Secretary in preparation of such study. In carrying out its duties under this section, the Commission shall submit to the Secretary of the Army the findings of the Commission with respect to whether the expenditure of Federal funds

on any construction or reconstruction affecting the capacity of the lock system on the Mississippi River and the Illinois Waterway Navigation System is required to meet the needs of the public convenience and necessity for adequate freight transportation services in the Midwest.".

TECHNICAL AMENDMENTS

SEC. 203. (a) Section 308(d)(2) of the Railroad Revitalization and Regulatory Reform Act of 1976 (15 U.S.C. 80a-3 note) is amended by striking out "subsection (c)" and inserting in lieu thereof "subsection (b)".

(b) Section 504(a)(2) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 824(a)) is amended by inserting "and equipment" immediately after "railroad's facilities".

(c) Section 511(h) of the Rail Revitalization Regulatory Reform Act of 1976 (45 U.S.C. 831(h)) is amended by striking out "PREQUISITES FOR GUARANTEES." and inserting in lieu thereof "PREREQUISITES FOR GUARANTEES.".

(d) Section 809(a)(1) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 1a note) is amended by striking out "abandoned" and inserting "abandoned since 1970" immediately after "railroad rights-of-way".

TITLE III—AMENDMENTS TO THE INTERSTATE COMMERCE ACT

DISCONTINUANCE AND ABANDONMENT PROCEDURES

SEC. 301. (a) Section 1a(1) of the Interstate Commerce Act (49 U.S.C. 1a(1)) is amended by adding at the end thereof the following new sentence: "The authority granted to the Commission under the section shall not apply to (a) abandonment or discontinuance with respect to spur, industrial, team, switching, or side tracks if such tracks are located entirely within one State, or (b) any street, suburban, or interurban electric railway which is not operated as part of a general system of rail transportation.".

(b) Section 1a(4) of the Interstate Commerce Act (49 U.S.C. 1a(4)) is amended—

(1) by adding immediately before the last sentence thereof the following new sentence "If such certificate is issued without an investigation pursuant to paragraph (3) of this section, actual abandonment or discontinuance may take effect, in accordance with such certificate, on the effective date of such certificate."; and (2) in the last sentence thereof, by inserting immediately after "issued" the following: "after an investigation pursuant to such paragraph (3)".

TECHNICAL AMENDMENTS

SEC. 302. (a) The second sentence of section 5(16) of the Interstate Commerce Act (49 U.S.C. 5(16)) is amended by striking out "paragraph (16)" and inserting in lieu thereof "paragraph (17)".

(b) The first sentence of section 17(9)(e) of the Interstate Commerce Act (49 U.S.C. 17(9)(e)) is amended by striking out "section" and inserting in lieu thereof "paragraph".

(c) Section 5b(5)(a)(iii) of the Interstate Commerce Act (49 U.S.C. 5b(5)(a)(iii)) is amended by striking out "section 15(7)" and inserting in lieu thereof "section 15(8)".

(d) Section 13(5) of the Interstate Commerce Act (49 U.S.C. 13(5)) is amended by adding at the end thereof the following:

'Nothing in this paragraph shall affect the authority of the Commission to institute an investigation or to act in such investigation as provided in paragraphs (3) and (4) of this section.".

(e) The final sentence of section 15(19) of the Interstate Commerce Act (49 U.S.C. 15(19)) is amended by striking out "section 2" and inserting in lieu thereof "section 1, 2".

(f) Section 22(2) of the Interstate Commerce Act (49 U.S.C. 22(2)) is amended—

(1) by inserting immediately after "under section 5a" the following: "or section 5b"; and

(2) by striking out "said section 5a" and inserting in lieu thereof "such section 5a or paragraph (8) of such section 5b".

(g) Part I of the Interstate Commerce Act (49 U.S.C. 1 et seq.) is amended by inserting immediately before section 28 the following center heading:

"DISCRIMINATORY STATE TAXATION".

TITLE IV—GENERAL PROVISIONS

ENVIRONMENTAL STUDY

SEC. 401. The Secretary of Health, Education, and Welfare shall, within 12 months after the date of enactment of this Act, submit a report to the Congress with respect to the environmental effects of section 306(i) of the Rail Passenger Service Act (45 U.S.C. 546(i)) and the financial effects on the National Railroad Passenger Corporation and the railroad industry of any repeal or modification of such section 306(i). Such report shall contain such recommendations as the Secretary may consider necessary or appropriate to balance environmental considerations with operating and financial considerations of the railroad industry, including recommendations with respect to equipping new railroad rolling stock and retrofitting existing railroad rolling stock.

2. Amend the title so as to read: "A bill to amend the Regional Rail Reorganization Act of 1973, the Railroad Revitalization and Regulatory Reform Act of 1976, and the Interstate Commerce Act".

COMMITTEE ACTION

The Subcommittee on Transportation and Commerce held three days of Public Hearings on June 22, 23 and 24, 1976, on "Rail Amendments of 1976" (Staff Working Draft, June 10), to amend the Regional Rail Reorganization Act of 1973, the Railroad Revitalization and Regulatory Reform Act of 1976, the Rail Passenger Service Act and the Interstate Commerce Act. Testimony was received from Congressman Robert E. Bauman; Congressman Clarence J. Brown; Congressman Benjamin A. Gilman; Congressman Pierre S. DuPont; the Department of Transportation; Interstate Commerce Commission; United States Railway Association; Association of American Railroads; Consolidated Rail Corporation; Pittsburgh and Lake Erie Railroad; Penn Central Transportation Company; New York, New Haven and Hartford Railroad Company; Eastern Shore Railroad Company; Railway Labor Executives Association and Brotherhood of Railway and Airline Clerks; Rail Progress Institute; National Industrial Traffic League; Union Tank Car Company; Trailer Train Company; American Trucking Association; Freight Forwarders Institute; American Institute for Shipper Associations, Inc.; and National Conference of Non-Profit Shipping Associations.

Subsequently, on July 28, 1976, H.R. 14932 was introduced by Mr. Rooney for himself. Mr. Metcalfe and Mr. Madigan which incorporated the recommendations made during the hearings.

The subcommittee met in open markup session on August 24, 1976 to consider H.R. 14932, and by voice vote, ordered the bill with one amendment reported to the full Committee.

The full Committee on Interstate and Foreign Commerce met in open markup session on August 31 and September 1, 1976, and by voice vote, ordered H.R. 14932 reported to the House with an amendment in the nature of a substitute, set forth above, consisting of the text of the Subcommittee print as amended by the Committee.

What the Bill Does

The reported bill includes a number of amendments to the Regional Rail Reorganization Act of 1973, the Railroad Revitalization and Regulatory Reform Act of 1976, and the Interstate Commerce Act.

With regard to the Regional Rail Reorganization Act of 1973, the reported bill provides a means for the existing Public Counsel to continue to function until the President nominates and the Senate confirms a successor. The reported bill extends previously granted deficiency judgment to cover all possible actions that the special court could take with respect to properties designated in the final system plan for "pass through" to the various commuter agencies in the region. It also clarifies any uncertainty regarding ConRail's transfer of certain rail properties to the State of Rhode Island as part of the final system plan.

Significantly, the reported bill increases the United States Railway Association's present loan authority from $230 million to $800 million which is necessary to pay certain claims arising from the operations of the bankrupt railroads immediately prior to conveyance. It has been found that there are insufficient funds presently available from the estates and loan authority to pay these claims in a timely manner in accordance with the Government commitment. The amount of claims is increased by the reported bill by making certain claims eligible for these loans that were not eligible in the original act. For example, health, life insurance and pensions for retirees and accrued vacations are made eligible for these loans. Also in this regard, the amendment provides that the loan funds cannot be discounted for prepaid interest, the escrowed and loan funds can be re-used as repayments are made from the estates, and a time limit of two years after enactment of this bill is imposed for presenting claims. The reported bill specifies the order in which escrowed funds from the estates will be used and provides that amounts collected as accounts receivable, cash or other current assets, or loan proceeds can be used to pay obligations of the estates eligible for these loans notwithstanding prior agreements.

In recognition of the difficulties experienced by States and others to reach an agreement with the trustees of the bankrupt railroads for service on discontinued rail lines, the reported bill specifically excludes from court evidence any such agreement in any future cases involving the overall valuation of the property.

The act is also amended to clarify that ConRail is not required to assume pre-conveyance obligations of the estates under collective bargaining agreements and FELA. Also, ConRail is to be compensated for the cost of issuing the loans to pay these obligations and for collecting these loans. Further, the act is amended to permit the allowance for displaced employees to include the 10 percent wage increase which went into effect for railroad employees throughout the nation on January 1, 1975.

The reported bill provides life and health insurance benefits for displaced non-contract employees. The act presently provides this protection for contract employees but not non-contract employees. The reported bill also amends the act to clarify the district court's handling of the bankrupt estates.

With regard to the Railroad Revitalization and Regulatory Reform Act of 1976, the reported bill provides more flexibility for the loan guarantee program established by section 511 of the Act. It makes clear that the guarantee for these loans has the full faith and credit of the United States and removes the requirement for an evaluation study and publication of a notice of application. It also provides that loans can be made for leased equipment. With regard to the prerequisites for the guarantees, the act is amended to provide that consideration should be given to the prospective earning power of the applicant or the value or prospective earning power of the property or a combination of these. The act presently provides for only the consideration of the value of the property. With regard to the conditions for guarantees, the act is amended to clarify the original intent of Congress by prescribing the amount of dividends that may be paid by the railroad during the term of the loan.

Another amendment to this act requires the Secretary of Transportation to study the impact of waterway transportation on railroads in the Midwest, particularly with regard to the effects of proposed improvements to Lock and Dam 26 at Alton, Illinois.

With regard to the Interstate Commerce Act, the reported bill corrects an unintended omission by specifying that the Commission's discontinuance and abandonment procedures do not apply to spur, industrial, team, switching or side tracks if such tracks are located entirely within one State.

Finally, the reported bill requires the Secretary of Health, Education and Welfare to make recommendations within 12 months as to whether waste disposal conveyances should be required on passenger and freight trains.

Background and Need

The Railroad Revitalization and Regulatory Reform Act of 1976 was signed into law on February 5, 1976 (Public Law 94–210). In accordance with this act, ConRail was established on April 1, 1976, as a result of an income based reorganization including $2.1 billion in Federal financing and the conveyance of certain properties from six bankrupt railroads which previously served the Northeast and Midwest. This constituted the largest corporate reorganization in the history of industrial America.

Although it has been only seven months since this landmark legislation was enacted, it has been determined that a number of essential amendments should be made to clarify the original Congressional intent, correct oversights in the act, and to correct provisions in the act which are now found to be improper.

It was almost inevitable that any major legislation such as this would need to be amended after a certain amount of actual experience. It is believed, however, that the fact there are relatively few amendments being proposed at this time is a reflection of the fine efforts expended by this Congress in considering that legislation.

Adequate Representation

The Railroad Revitalization and Regulatory Reform Act of 1976 established an independent Office of Rail Public Counsel. The Pres-

ident was mandated to appoint (with the advice and consent of the Senate) a director within 60 days after enactment (i.e., February 5). To date, the President has not nominated a director. It was the intent of Congress to have the Public Counsel participate in the many important rulemaking proceedings now underway at the Interstate Commerce Commission regarding the reorganization process as a result of the enactment of Public Law 94–210. Thus, the failure of the President to nominate a director is thwarting the intent of Congress.

The effect of the amendment in the reported bill will be to allow the existing Public Counsel to participate in these proceedings until his successor is nominated and confirmed.

Deficiency Judgment Protection

Sections 303(c)(5) and 206(d)(5) of the Regional Rail Reorganization Act of 1973 provides that the United States shall pay any judgment entered against ConRail, Amtrak, a profitable railroad, a State, or responsible person with respect to the conveyance of any rail properties designated under section 206(c)(1) (C) or (D) as is constitutionally required. The Committee was informed that ConRail encountered problems with regard to an ambiguity in the adequacy of deficiency judgment protection during negotiations with States and transportation authorities for the acquisition and transfer of rail properties. It is argued that the existing language protects against a monetary judgment but does not adequately protect against the possibility of other types of judgments, such as a required adjustment in the base value of the certificates of value, a reallocation of securities, or a requirement to issue additional securities. It is the Committee's opinion that the Congress definitely intended that ConRail, Amtrak, the States, or responsible person should not be exposed to any possible judgment imposed with regard to the transfer of properties designated in the final system plan. Thus, in order not to endanger the viability and solvency of the parties, the amendment in the reported bill reaffirms the previously expressed Congressional intent by making it clear that the deficiency judgment protection afforded in the act covers all possible actions that the special court could take with respect to the properties designated in the final system plan.

Expiration of Options

The Committee was informed that the State of Rhode Island has been unable to consummate the transfer of certain properties located in that State which were contemplated as part of the final system plan. The amendment in the reported bill would enable the State to acquire these properties by removing the uncertainties regarding those transfers.

Loans for Payment of Obligations

Section 211 of the Regional Rail Reorganization Act of 1973 authorized the United States Railway Association to make loans to ConRail, Amtrak, and other acquiring carriers to meet existing or prospective obligations of the railroads in reorganization which USRA determines should be paid in order to avoid disruptions in ordinary

business relationships. The purpose of this section was to provide a mechanism for effecting a smooth transition from the rail operations of the bankrupt railroads to ConRail and other profitable carriers in accordance with the final system plan. The loans were designed to preclude disruptions in rail operations due to the inability of the bankrupt estates to currently meet their obligations to employees, shippers, other railroads, and suppliers for materials and services rendered immediately prior to conveyance on April 1, 1976. It was clear that the claimants would probably react against ConRail and the other acquiring carriers if their unpaid claims were not timely paid because they were left with the estates to be individually collected through the reorganization courts. In fact, based on the assurance that the loan funds provided by section 211 would be available and that claims would be paid in a timely manner, employees, shippers, other railroads, and suppliers continued to provide the necessary materials and services to the bankrupt railroads until conveyance and to the acquiring railroads after conveyance thereby permitting uninterrupted rail service and a smooth conveyance. Unfortunately, however, their claims have not been paid. Failure to pay these claims is causing considerable hardship on the claimants, particularly the numerous small organizations whose cash flow is being devastatingly impacted.

It should be noted that in an opinion pertaining to failure to make timely payment for railroads' interline claims, the U.S. District Court judge stated:

> When the new section 211(h) was finally unveiled, the Court was told that it contained more than enough funding to meet the problem. In fact, the original appropriation had been reduced at the government's request . . . Now that the time to pay the interlines has arrived, the Court is informed that, under USRA regulations, the interline loan may not be granted. If this is so, the Court would have no alternative but to conclude that serious misrepresentations have been made to this Court by representatives of the Government.

With regard to the appropriation reduction, the Conference Report on the appropriations for the 1976 Rail Act states:

> It is not the intention of the conferees that the suppliers of the bankrupt railroads be denied payment of legitimate claims. The conferees are in agreement that, if necessary, a subsequent budget request for these claims will be considered.

The claims have not been paid because there are insufficient funds available from the bankrupt estates and in existing loan authority and because of confusion as to the implementation of this program. Moreover, only a minimum amount of the claims have been paid from the available funds because due to the insufficient amount of funds available to pay all claims there is no agreement as to the priorities as to how the available funds should be divided. The difference between the amount of claims and available funding is shown by the following schedule:

Estimated claims eligible for loans authorized by section 211(h)(1) of the Regional Rail Reorganization Act of 1973—including claims made eligible by the reported bill

[In thousands of dollars]

Employee related claims:	
a. Payroll	51,538
b. FCIA taxes	36,548
c. Pensions	87,263
d. Vacations	106,531
e. FELA	60,134
f. Grievance	30,874
g. VRD	9,500
h. Retiree-health and life and pensions	38,000
Subtotal	420,386
Railroad claims (interline)	242,616
Equipment obligations	38,309
Supplier claims	125,291
Shipper claims (damage)	112,546
Agency fee[1]	43,550
Total claims	982,798
Less estate assets	466,194
Less existing loan authority	230,000
Shortfall	286,604

[1] Roughly 5 percent to ConRail and other carriers to compensate for the administrative burden of paying claims and collecting loans.

Obviously, as there is a "shortfall" of over $286 million, the increase in loan authority amounting to $70 million provided in the reported bill will not be sufficient to immediately pay all claims. Not all claims, however, are eligible for immediate payment as they are subject to litigation or negotiation. For example, not all of the shippers claims for damages or all of the FELA claims have been settled. Therefore, not all of the "shortfall" need be funded immediately. It is believed that these claims can be paid in a timely manner because by the time they have been settled additional funds will be made available from the estates or some of the loans will have been repaid thereby making additional funds available for further loans.

The reported bill also expands the types of claims eligible for section 211(h) loans. It adds: (1) Claims for accrued vacations; (2) claims deriving from membership in employee voluntary relief plans to which both railroads in reorganization and employees have made contributions; and (3) amounts required for adequate funding for payment of medical and life insurance benefits for contract, non-contract and retired employees on account of service prior to date of conveyance with a railroad in reorganization. The Committee believes that these claims come within the original purposes for which these loans are designated. For example, existing legislation provides that the section 211(h) loans could be used for "claims of employees arising under collective bargaining agreements". It is the Committee's opinion that vacation pay is clearly within this category but that a clarification is needed to prevent a misrepresentation of the original Congressional intent. There appears to be no reason why these claimants be denied timely payment by being required to await settlement of the estates. Also, there appears to be no reason why these claims should be to the account of ConRail and the other acquiring railroads

as they pertain to normal administrative expenses incurred by the railroads in reorganization prior to the date of conveyance.

With further regard to the inability to pay some of the claims at the present time with available funds, the Committee is aware that some confusion exists regarding the Congressional intent as to the application of claims to the assets of the estates. It was the Congressional intent that the loan funds were to be used in conjunction with the assets of the estates.

Several of the reorganization courts, however, have made a different interpretation of the act. The courts have been reluctant to use assets of the estate, except current accounts receivable to pay these claims. In addition, the court have been unclear as to what specific claims could be paid with 211(h) funds. In some cases, unfortunately, the courts have held that available estate funds should be applied to the payment of obligations which are not eligible for 211(h) funding. The end result of these interpretations prevents USRA from releasing any funds to ConRail and the other acquiring carriers to pay these claims.

A problem also exists as to whether or not escrowed funds are "cash or other current assets" as provided in existing legislation. The matter is prsently on appeal in several Circuit Courts. The Committee has no intention of interfering with this case. In the event, however, that these escrowed accounts are determined by the courts to be "cash and other current assets" of the estates the Committee believes that they should be applied to: (1) Reduce outstanding loans to ConRail by USRA; (2) reimburse USRA with regard to any loans previously forgiven; and (3) further payment of any remaining obligation. If the application of these funds are not specified in this manner, thereby protecting the Government's interest, the funds could be diverted for payment of claims that are not eligible for section 211 (h) loans. For example, the funds could be used to pay taxing authorities for past due taxes. Claims for past due taxes are not eligible for section 211(h) loans because their payment was not necessary to avoid disruption of rail service immediately prior to conveyance.

In summary, the purpose of the amendments in the reported bill is to eliminate the uncertainties about the intent of Congress in creating the 211(h) loan program and to prevent adverse actions against ConRail and other acquiring carriers for unpaid claims. These amendments reaffirm the initial policies adopted by Congress in enacting 211(h) and would have the effect of correcting court orders that misinterpreted the way in which Congress intended section 211(h) to work. Further, after enactment of the amendments, processing these claims on behalf of the estates can begin so that those persons upon which ConRail and the other acquiring carriers depend for future and current service are able to remain viable.

Protection of Employee's Pension Benefits

The Regional Rail Reorganization Act of 1973 contains provisions to protect all current employees by preventing their being placed in a worse position with respect to wages and other benefits. In this regard, the Special Court has held that individuals who were retired before ConRail and other acquiring carriers took over the bankrupt

railroads from which these individuals had retired were also "protected" employees in so far as pension benefits were concerned. The act, however, also provides in section 303(b)(G) that ConRail has an option to terminate its responsibilities for the pension plan and thus return the responsibility for payment of pensions to the Trustees in Bankruptcy of the railroads.

The Committee has been informed that ConRail has exercised its option to terminate 14 pension plans. The Committee is further informed that the Trustees in Bankruptcy for a number of railroads intend to take no action to continue the pensions of the former employees. It is estimated that about 1,600 retirees would be adversely affected. The cost of the pension programs, on a one-time basis, is about $10 million.

The Committee believes that the same justification exists for protecting the pension benefits for these retirees as exists for protecting employees of the bankrupt railroads when they were taken over by ConRail and the other acquiring railroads.

The amendment in the reported bill provides that ConRail and the other acquiring railroads should accept the responsibility for paying these claims. This responsibility is not, however, at the expense of ConRail and the other acquiring railroads. Rather, the pensions are to be paid as other claims eligible for section 211(h) loans, and reimbursement will be sought from the estates of the bankrupt railroads.

Basis for Compensation

In accordance with the final system plan, a number of miles of rail lines of the bankrupt railroads in the Northeast and Midwest were not included in the ConRail system nor were they conveyed to other profitable railroads. Service on these rail lines, however, was not necessarily to be discontinued as the rail lines are eligible for a subsidized operation. In order that these lines can continue to be operated it is necessary for States or other responsible persons providing a portion of the subsidy to enter into agreements with the trustees of the various bankrupt railroads.

The Committee is informed that the trustees of the bankrupt railroads have been reluctant to enter into such agreements because existing legislation provides that the compensation to be paid should be based on the value of the property. The trustees fear such an agreement will be used to their detriment in subsequent litigation to determine the valuation of the property in the final settlement with the Government.

The amendment in the reported bill is designed to permit these agreements to go forward. It specifices that the agreement is merely for the use of the rail property, and specifically excludes from court evidence any such agreements as pertaining to the overall valuation of the property. The amendment is prospective so that agreements already entered into are not excluded from evidence. This avoids the Constitutional question that might arise with respect to agreements already entered into.

Collective Bargaining and FELA Claims

The existing language of sections 504(a), (e), and (g) of the Regional Rail Reorganization Act of 1973 permits an inference that

claims arising before conveyance under collective bargaining agreements of the bankrupt arilroads and under the FELA are the obligation of ConRail and not of the estates. Moreover, under existing provisions, ConRail is required to assume the cost of processing such claims.

In order to remove this inference and fulfill the original Congressional intent, the amendment in the reported bill makes it clear that to the extent collective bargaining and employee personal injury claims arose prior to the date of conveyance (April 1, 1976) they are to be paid with the assistance of section 211(h) loans. Thus, the claims remain the obligations of the estates of the bankrupt railroads reorganized under the act. Further, as the processing of these claims will probably be over an extended period of time, consistent with loans for other eligible claims, ConRail is authorized to use loan funds on a current basis to reimburse its costs and to provide reasonable compensation for its services associated with the processing of the claims involved.

Employee Displacement Allowance

In the original language in Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, the amount of an employee's displacement allowance was based upon his earnings in the 12 months preceding the date on which he was first adversely affected following the date of conveyance. Since this period of time would be different in almost every employee's case and because some employees might be able to artificially increase their displacement allowance prior to being "adversely affected", representatives of ConRail sought an agreement which would avoid the tremendous administrative burden of calculating employee allowances on the basis of separate periods of time for virtually each employee. Consequently, Title V was amended to make the test period identical for all employees. The amendment provided for employee allowances to be based upon the 12 months preceding February 26, 1975, the date on which the preliminary system plan was issued, rather than the 12 months preceding the adverse effect of each individual employee.

On January 1, 1975, a 10 percent wage increase went into effect for railroad employees throughout the nation. It was intended that such "subsequent wage increases" would be added to an employee's test period average compensation, and under the original language of Title V (the 12 months preceding an employee's adverse effect), it would have been so added.

However, since the amended test period would run from February 1, 1974, to January 31, 1975, the 10 percent wage increase would not be a "subsequent" wage increase and thereby would not be added to the employee's test period average compensation. The result is to effectively deprive these displaced employees of the 1975 10 percent wage increase which all other railroad employees in the United States enjoy. No such unfair result was intended by Congress.

The change of date accomplished by the amendment in the reported bill establishes the test period as January 1, 1974, to December 31, 1974. Consequently, the January 7, 1975, 10 percent wage increase becomes a "subsequent" wage increase and added to an employee's test period average as originally intended.

The Committee is informed that it is anticipated that 6,000 employees will receive this displacement allowance and that the total amount of this adjustment for the 10 percent pay increase will be about $360,000 a month or $60 per person. This amount should decrease about 15 percent each year hereafter.

In accordance with section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976, the displacement allowance for employees placed in lower paying jobs is reduced by the amount of any other earnings received. The result is that the employees are deprived of a part of their supplemental income. This situation exists because "displacement" and "dismissal" allowances are combined with other formulae. Consequently, provisions which normally would, and should, have applied only to the "dismissed" or furloughed employees, such as section 505(b)(1)(B), now applies to both displaced and dismissed employees.

The Committee believes that this provision is too restrictive since income derived from non-railroad employment should not be related to railroad employment. Therefore, the amendment in the reported bill restricts the application of the allowance set-off provision to those employees furloughed or "deprived of employment".

Another problem resulting from the complex circumstances of employees being displaced pertains to a situation affecting 29 employees in Bay City, Michigan. These employees of railroads whose properties were acquired by railroads other than ConRail accepted positions with ConRail. In order to exercise their seniority rights they were required to accept a position anywhere in the entire State of Michigan regardless of the thirty-mile limit set by the definition of "change in residence". Consequently, they were denied their moving expenses—a benefit granted to other employees who obtained a position within the geographical definition of a thirty mile radius. It is estimated that the moving expenses for these employees amounts to $150,800. The amendment in the reported bill rectifies this situation by allowing payment of these expenses as this unique problem was not foreseen in the deliberations for the original act.

Noncontract Employees

Section 505(i)(2) of the Regional Rail Reorganization Act of 1973 provides for the resolution of disputes of non-contract employees over the interpretation and application of Title V provisions. Under the existing language, however, a non-contract employee could arguably bypass the dispute resolution procedure altogether and bring suit directly in court or process a claim through the dispute resolution procedure and then, if the result were not to his liking, institute a court suit based upon the same claim.

The amendment in the reported bill makes it clear that the dispute resolution procedure is the exclusive avenue for resolving non-contract employee disputes over the interpretation or application of any provision of Title V, and that an arbitration decision thereunder shall be final and binding on both parties and the matter is not to be subsequently taken to the courts.

Also, this section provides that protected non-contract employees who have been displaced are currently afforded monthly displacement

allowances. However, unlike protected agreement employees, non-contract employees deprived of employment are not entitled under existing Title V provisions to fringe benefit protection.

The Committee is convinced that such unequal treatment between contract and non-contract employees with regard to fringe benefits is not equitable nor intended by Congress in the original deliberations.

The amendment in the reported bill affords to non-contract employees deprived of employment, Title V protection with respect to medical insurance, life insurance and voluntary relief plans. In order to avoid a situation where displaced non-contract employees might be entitled to a higher level of fringe benefits than their active non-contract employee counterparts, the amendment expressly provides that the maximum level of protection with respect to the listed fringe benefits is the level of such benefits which is then being afforded to active non-contract employees of comparable age, position, and level of compensation. Also, as is the case with the protection that is presently afforded contract employees, the protection that would be afforded non-contract employees would be limited to the time period "in which the employee is entitled to protection", which is defined in section 505(e).

Exemptions

The Committee is informed that certain clarifications in the Regional Rail Reorganization Act of 1973 are needed with regard to the powers and duties of the district court after the date of conveyance when rail operations cease for the railroads in reorganization and the powers and duties of the Commission with regard to these railroads also ceases.

The amendment in the reported bill is merely technical in that it removes the statement that the powers and duties of the Commission under section 77 of the Bankruptcy Act shall be vested in the district court of the United States which has jurisdiction of the estate of any railroad in reorganization at the time of conveyance. It also changes the terms of the proceedings to reorganize or liquidate the railroad in reorganization under section 77 from "just and reasonable" to "fair and equitable".

Obligation Guarantees

The Committee is aware that more flexibility is needed with regard to the obligation guarantee program established by section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976. This section authorizes the Secretary to guarantee the payment of principal and interest on obligations amounting to $1 billion if the proceeds are used to acquire or to rehabilitate and improve railroad facilities or equipment.

The Committee found, for example, that if it was specified that the guarantees constitute general obligations of the United States backed by the full faith and credit of the United States, the marketability of the obligations guaranteed would be assured. In addition, this could reduce the costs of borrowing to the applicants. The Committee also found that it is essential that leased equipment be eligible for guarantee. Such equipment is an integral part of railroad operations—a number of railroads lease most of their equipment. With further regard to the prerequisites for guarantees, the Subcommittee

found that a number of railroads could not qualify for the guarantees because the probable value of the equipment or facilities to be improved, rehabilitated, or acquired was not sufficient to provide reasonable security and protection in the event of default by the obligor. The Committee believes that a number of additional railroads could become eligible for guarantees and that the protection to the Government could still be achieved if more flexibility were granted permitting the obligations to be secured by (1) the prospective earning power of the applicant or (2) the value or prospective earning power of the equipment or facilities to be improved, or (3) a combination of the two. Obviously, some projects have adequate value but inadequate earning power, whereas others have inadequate value but adequate earning power and still others have insufficient value and earning power but combined they are sufficient.

The Committee also found that the conditions of guarantees specified in the act are unduly restrictive with respect to allowable dividend payments. It is essential that obligators be permitted to pay dividends during the period of the loan in the event they are warranted by the railroad's financial condition. The primary purpose of the loans is to make the railroads successful. If this is accomplished, dividends should be permitted in order for the railroads to enter the equity market.

The financing provisions of the Railroad Revitalization and Regulatory Reform Act of 1976 were enacted to provide the rail industry with financial assistance in order to rehabilitate its facilities and equipment and thereby increase the industry's profitability and in turn attract private sector investments. The dividend restrictions of the loan guarantee program of section 511 are counterproductive to this goal in that equity investors, which might otherwise be attracted to a profitable carrier, will be reluctant to invest in carriers which have submitted to restrictions on its dividends for the 25 or 30 year life of the loan guarantee program.

In addition, profitable carriers who have not partaken of the section 511(h) loan guarantee program, will be reluctant to merge with or acquire rail carriers who have agreed to 25 or 30 year restrictions on their dividends.

The test of dividend restrictions provided by the amendment in the reported bill are considered objective by the Committee in that they provide investors with a reasonable degree of certainty as to a dividend policy as compared with an undefined determination by the Secretary as presently provided in the act.

This revision to the dividend restrictions contained in section 511(j) in the Railroad Revitalization and Regulatory Reform Act of 1974 would allow a rail carrier which is profitable during the period of the loan guarantee to pay, in those years in which it has sufficient earnings, a reasonable amount of dividends (i.e., 50 percent of its retained earnings during such a period) thereby establishing or continuing a dividend policy which would attract or maintain the interest of equity investors.

Midwest Rail Study

The Department of Transportation has expressed serious concerns that the projects for improving Lock and Dam 26 at Alton, Illinois,

are not being studied on a systematic basis. It is believed that these projects could have serious adverse economic effects on hard-pressed midwestern railroads and rail dependent shippers. In view of the substantial financial assistance for railroads provided by Congress in the Regional Rail Reorganization Act of 1973 and the Railroad Revitalization and Regulatory Reform Act of 1976, it seems only prudent to study the effects the improvements to Lock and Dam 26 would have on these railroads.

The massive Federal subsidy to improve the waterway system will lower barge costs thus diverting freight revenue from the existing rail system. Railroads have a high level of fixed costs (e.g. track, roadbed) which must be shared as unit charges to all rail shippers whereas the substantial cost of facilities for the waterway system which are used by water carriers is borne by the government and thus essentially free to the water carriers. If traffic is diverted from the Midwestern railroads by constructing Lock and Dam 26 and related upstream locks, these fixed costs must be shared by the remaining shippers dependent on rail service thus raising the required charges for remaining shippers. If the predictions of the railroads as to the traffic diversion which would be caused by expansion of the locks are true, the Congress would be undercutting its efforts to strengthen the railroads to keep them in the private sector by authorizing this expansion.

Discontinuance and Abandonment Procedures

In establishing local rail service continuation in the Railroad Revitalization and Regulatory Reform Act of 1976, amendments to the Interstate Commerce Act were included in the nature of substitute provisions dealing with abandonments of lines of railroads, together with technical conforming amendments to that Act's provisions dealing with extensions. In particular, it added a new section 1a (Discontinuance and Abandonment of Rail Service) to the Interstate Commerce Act. This new section, however, inadvertently does not expressly exempt "spur lines" from its provisions. The Commission's abandonment procedures have never applied to such track and it is not Congress' intent (nor does the Commission desire) that such track should be subject to its abandonment procedures. These tracks are not operated as a part of a general system of rail transportation and thus are purely local and should be subject to local jurisdiction as has been the case historically.

According to existing law, where the Commission has not ordered an investigation, it must issue a certificate authorizing an abandonment 60 days after an application has been filed. However, the law also provides that "actual abandonment or discontinuance" may not take effect until 120 days after the issuance of the certificate. Consequently, there is a minimum 6-month delay in all abandonment cases even where there is no service on the line. Therefore, the amendment in the reported bill limits the 120-day provision to applications which the Commission has investigated and provides that actual abandonment would be ordered at the end of the 60-day period in uncontested cases.

Subsection 301(a) is a technical amendment designed to correct an oversight contained in the Railroad Revitalization and Regulatory

Reform Act of 1976. In that Act the then existing language contained in Sec. 1(18) of the Interstate Commerce Act was transferred to Sec. 1(a)(1) of the Act. Through oversight the transfer was accomplished with respect to requests by railroads for extension of lines but was not included with respect to abandonments or discontinuances even though there was no change in existing law contemplated by the redrafting of the provision.

Sec. 301 continues in effect a policy which has long been followed by the Interstate Commerce Commission in excluding certain minor track abandonments from the normal abandonment and discontinuance procedures of the Commission.

It is abundantly clear that this policy has been long-standing in cases before the Commission. It is well settled that a liberal or broad construction must be given to the word "extension" and that a limited or narrow construction must be accorded the words "spur" and "industrial" tracks. *Chicago, M. St. P. & P. R. Co.* v. *Northern Pac. R. Co.*, supra; *Lancaster* v. *Gulf, C. & S. F. Ry. Co.*, 298 Fed. 488 (D.C.); *Texas & P. Ry. Co.* v. *Gulf, C. & S. F. Ry. Co.*, supra; *Piedmont & N. Ry. Co.* v. *Interstate Commerce Commission*, 286 U.S. 299; and *Interstate Commerce Commission* v. *Piedmont & N. Ry. Co.*, 51 F.(2d) 766 (D.C.).

There should be no confusion because of this technical correction. The existing definitions which have been developed by the Interstate Commerce Commission will be adequate to assure that branch lines or other tracks requiring a full hearing prior to abandonment will not be classified as a spur, industrial, team, switch or side track.

Environmental Study

The Railroad Revitalization and Regulatory Reform Act of 1976, excludes intercity rail passenger service from the provisions of Section 361 of the Public Health Services Act, including the regulations promulgated thereunder concerning the discharge of wastes from railroad conveyances. There remains a question, however, as to whether or not this was an appropriate provision and whether or not the provision should be expanded to similarly exclude all railroad conveyances from complying with the waste regulation. Concerns have been expressed for the environmental degradation, offensive nature and possible threat to public health caused by these disposal practices. This threat is arguably intensified where railroad rights-of-way pass through densely populated areas, or near bodies of water that serve our water supply and recreational needs. In addition, railroad workers, while servicing trains or performing their tasks, are exposed to human wastes on the ground or clinging to the undersides of the car. Children and domestic animals and wildlife also come in contact with these discharges.

The railroad industry favors exemption from the Food and Drug Administration regulation because there are no proven cases to date of any outbreak of a communicable disease due to the procedure of discharging raw human wastes onto railroad tracks, nor is there epidemiological evidence to show that such an outbreak will occur. Proponents of the regulation counter this argument by saying the fact

that outbreaks of these diseases have not been documented may be due to the obvious difficulty of tracing such outbreaks to these sources (e.g. water contamination).

The railroad further contend that if they were exempt from this regualtion, they could devote economic and technical resources to solving other problems they consider to be more urgent. It reportedly costs about $4,000 to install containerized toilets on each new locomotive and about $1,100 each for retrofiting existing locomotives and about $1,100 for cabooses (new or retrofited.)

Due to the controversial nature and the conflicting information received, the Committee believes that a study of the matter is warranted in order to guide it in any future contemplated action.

Cost Estimates

In compliance with clause 7 of Rule XIII of Rules of the House of Representatives, the Committee makes the following statement relative the cost of this legislation:

The reported bill increases the loan authority contained in sections 210 and 211 of the Regional Rail Reorganization Act of 1973 by $70 million. Existing legislation provides that these loans should be repaid in three years; if they are not repaid by this time they will be forgiven and the Government will have a case for action against the estates of the bankrupt railroads. The Committee has received no information indicating that these loans will not be repaid. It is not clear, however, as to the length of time the loans will be outstanding within this time period since this is a matter of how long it will take for additional funds to become available from the bankrupt estates. Nevertheless, these loans are to be granted by USRA at an interest rate of about one-half percent greater than the cost of borrowing the funds to make the loans. Thus, there should be no costs to the Government in carrying out this provision of the reported bill.

The reported bill also (1) directs the Secretary of Health, Education, and Welfare to make recommendations as to whether waste disposal conveyances should be required on passenger and freight trains and (2) directs the Secretary of Transportation to study the impact of waterway transportation on railroads in the Midwest. The Committee recognizes that an element of cost is involved in these studies but is unable to estimate what these costs will be. The reported bill, however, does not authorize additional funds to these departments for those studies as it is believed the costs involved are not significant enough that they cannot be absorbed in the normal operations.

In regard to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Congressional Budget Office submitted the following cost estimate relative to the provisions of H.R. 14932:

Congressional Budget Office

COST ESTIMATE, SEPTEMBER 7, 1976

1. Bill: H.R. 14932.
2. Bill title: Rail Amendments of 1976.

3. Purpose of bill: The bill amends the Regional Rail Reorganization Act of 1973 (RRR Act) and other rail legislation to modify various procedures and responsibilities related to the reorganization of the U.S. rail system. In addition to a number of technical and procedural changes and clarifications of present law, the bill increases USRA's loan authorization under section 211(h) of the RRR Act from $230 million to $300 million, while excluding interest from the limitation and allowing the funds to be reloaned after being repaid. It also broadens the types of claims that are eligible for 211(h) funding to include employee claims for medical and life insurance benefits, for certain accrued pension benefits, and for certain benefits derived from membership in employee voluntary relief plans. The bill provides for Conrail to be reimbursed by USRA for expenses incurred by the former in seeking reimbursement from the railroads in reorganization for obligations paid on their behalf under section 211(h). The bill also affirms that collective bargaining and employee personal injury claims that are paid by Conrail, Amtrak, or an acquiring carrier under the provisions of section 211(h) will remain obligations of the estates of the railroads in reorganization—and that reimbursement is to include the costs and expenses of processing such claims.

In addition, the bill makes changes in a number of other areas, including the following:

It requires the Rail Services Planning Office of the ICC to perform the functions and duties of the Office of Rail Public Counsel, until the latter's director is appointed and assumes office.

It changes the base period for computation of the employee displacement allowance so as to fully reflect a 10 percent wage increase that was effective January 1, 1975. It also slightly increases the number of employees eligible for moving expense benefits, and extends protection to noncontract employees with respect to medical and life insurance and voluntary relief plans.

It provides more flexibility to the Secretary of Transportation in determining eligibility for loan guarantees under section 511, and affirms that such guarantees are backed by the "full faith and credit" of the United States.

It mandates a comprehensive one-year study by DOT of freight transportation in the Midwest, to include an assessment of the impact on the rail system of changes in the capacity of the lock system of the Mississippi River and Illinois Waterway Navigation system. It also requires a report from the Secretary of Health, Education, and Welfare on the environmental effect of section 306(i) of the Rail Passenger Service Act and the potential impact on the railroad industry of any change in that provision.

4. Cost estimate: The cost to the government of the provisions in this bill is summarized below:

[In millions of dollars]

	Fiscal year—				
	1977	1978	1979	1980	1981
Additional payments by the Railroad Retirement Board	10.1	9.4	8.8	8.3	7.8
DOT and HEW studies	1.3				

In addition, the $70 million increase in USRA guaranteed loan authority creates a potential liability for the U.S. government, which would be obligated to pay off loans in that amount in the event of default. (This is in addition to the $230 million in loan authority already authorized.) Furthermore, the risk of such a default is increased by the provisions in the bill which allow funds to be reloaned after being repaid, exclude interest from the limitation, and broaden the types of claims eligible for such funding.

There is, in addition, some question as to the source of the USRA funds that will be required to reimburse Conrail for the expenses it incurs in seeking reimbursement from the railroad estates for obligations paid in their behalf under section 211(h). The Association may well seek additional appropriations to cover these costs, which could total as much as $500,000 in the event of lengthy legal proceedings.

5. Basis for estimate: The additional obligations for the Railroad Retirement Board, to be paid out of the Regional Rail Transportation Protective Account at the Treasury, are created in sections 108 and 109 of the bill. These sections change the basis for computing the employee displacement allowance, extend moving expense benefits to certain employees affected by an acquisition, and extend protection to noncontract employees with respect to medical and life insurance and voluntary relief plans. Conrail estimates that employee displacement claims are totally approximately $36 million a year. It is estimated that the change in basis will increase present employee displacement allowances by approximately 8 percent, or $3 million a year. In addition, it is expected that new claims totalling approximately $7 million will result from the change in basis, an increase of 20 percent above the present level. Thus, the overall impact of this change is estimated to be $10 million initially, declining by 6 percent a year due to attrition.

The moving expense benefits are estimated to average $5,000 per employee, and affect 29 employees; these are one-time costs only, assumed to be paid in fiscal year 1977. The cost of the additional insurance benefits is not determinable at this time, but is expected to involve only a small number of employees.

The DOT Midwest freight study is estimated to cost $1.25 million, the bulk of which will be used for contractors' services, including origin-destination studies, rate studies, and traffic projections. Based on DOT estimates, about $1.0

million will be required for contractual research, with the remainder used for consultants and experts, administration, travel, support services, supplies and report production. The HEW report will require a much smaller effort and will be produced mostly in-house, at a cost of less than $100,000. Since both reports are due within a year of enactment of the bill, virtually all costs will be incurred in fiscal year 1977.

6. Estimate comparison: None.
7. Previous CBO estimate: None.
8. Estimate prepared by: Robert Sunshine.
9. Estimate approved by:

C. G. Nuckels,
For James L. Blum,
Assistant Director for Budget Analysis.

Inflationary Impact Statement

Pursuant to clause 2(1)(4) of the Rule XI of the Rules of the House of Representatives, the Committee feels that the enactment of this legislation will have no inflationary impact on the prices and costs in the operation of the national economy. Moreover, it is emphasized, that enactment of the reported bill will provide the funds necessary to pay sizeable amounts of pre-conveyance claims due to employees, suppliers, railroads, and suppliers. The availability of the funds to these persons should, in addition to averting bankruptcy for certain small suppliers, provide a degree of stimulus to the economy.

Oversight Findings

In regard to clause 2(1)(3)(A) of Rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been made by the Committee.

In regard to clause 2(1)(3)(D) of Rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

Section-by-Section Summary

Section 1—Short Title, Table of Contents

The first section provides that this legislation may be cited as the "Rail Amendments of 1976". It also contains a table of contents for the reported Bill.

TITLE I—AMENDMENTS TO THE REGIONAL RAIL REORGANIZATION ACT OF 1973

Section 101—Adequate Representation

This section amends section 205(d)(7) of the Regional Rail Reorganization Act of 1973 to provide that the Rail Services Planning Office of the Interstate Commerce Commission may employ and utilize attorneys and other necessary personnel to perform the functions and duties of the Office of Rail Public Counsel pursuant to section 27 of the Interstate Commerce Act, until such time as the Director of the

Office of Rail Public Counsel has been appointed and confirmed. This section also provides that the funds authorized to be appropriated to the Office of Rail Public Counsel are authorized to be made available to carry out the provisions of this amendment.

Section 102—Deficiency Judgment Protection

Subsection (a) of this section amends section 206(d)(5) of the Regional Rail Reorganization Act of 1973 to provide that the Board of Directors and the corporate entity of ConRail are adequately protected when transferring property pursuant to the final system plan to meet the needs of commuter or intercity rail passenger service. It provides that the corporate entity of ConRail, and its Directors, shall not be liable to any party for money damages "or in any other manner" solely by reason of the fact that ConRail transfers property to Amtrak, or to any State (or any local or regional transportation authority), to meet the needs of commuter or intercity rail passenger service.

Subsection (b) of this section amends the first sentence of section 303(c)(5) of the Regional Rail Reorganization Act of 1973 to provide that ConRail, Amtrak, a profitable railroad operating in the region, a State, or a responsible person (including a governmental entity) will be fully indemnified for any cost or liabilities imposed as a result of any judgment entered against any of them in connection with properties designated in the final system plan for "pass through" to meet the needs of commuter or intercity rail passenger service.

Section 103—Expiration of Options

This section amends section 206(d) of the Regional Rail Reorganization Act of 1973 to provide that any option conveyed to ConRail by a bankrupt railroad with respect to the acquisition by ConRail (on behalf of a State or a local or regional transportation authority) of rail properties designated to meet the needs of commuter or intercity rail passenger service shall be deemed to remain outstanding and in effect until 7 days after the date of enactment of this legislation. This section would permit ConRail to transfer to the State of Rhode Island certain properties located in that State and clarify any uncertainty regarding those transfers.

Section 104—Loan for Payment of Obligations

Subsection (a) of this section amends section 211(h)(1) of the Regional Rail Reorganization Act of 1973 relating to the authority of the U.S. Railway Association to make loans to ConRail, Amtrak, and profitable railroads to meet existing or prospective obligations of the railroads in reorganization in order to avoid disruptions in ordinary business relationships. This subsection makes several specific changes in existing law.

First, it increases from $230 million to $300 million the ceiling on the amount of loans which may be outstanding under this subsection at any one time.

Second, it permits the use of loan funds to make payments to railroads for settlement of all current accounts and obligations, in addition to current interline accounts.

Third, it permits use of loan funds for payment of amounts required to provide adequate funding for payment, when due, of claims

deriving from membership in any employee voluntary relief plan which provides benefits to its members and their beneficiaries in the event of sickness, accident, disability, or death, into which both a railroad in reorganization and employee members have made contributions.

Fourth, it also permits the use of loan funds to pay amounts required to provide adequate funding for payment, when due, of medical and life insurance benefits for employees (whether or not their employment was governed by a collective bargaining agreement) on account of their service with a railroad in reorganization before the date of conveyance of the property of such bankrupt railroad, and or individuals who retired (before such date of conveyance) from service with a bankrupt railroad.

Fifth, it requires the U.S. Railway Association to make a loan if it makes certain findings and also adds to the alternative findings that the Association must make before making a loan under this subsection findings that—

(1) a claim was presented to a railroad in reorganization or to ConRail within 2 years after the date of enactment of this legislation;

(2) the loan money is to be used to make payment for services or materials, the furnishing of which serve to avoid disruptions in ordinary business relationships before the date of conveyance of rail properties, or the furnishing of which is necessary to avoid post conveyance disruptions in ordinary business relationships; and

(3) the joint agreement between the Finance Committee of the U.S. Railway Association and ConRail relating to procedures for seeking reimbursement from railroads in reorganization provide that ConRail receive reimbursement from the U.S. Railway Association for any expenses incurred in seeking reimbursement from any railroad in reorganization for obligations paid by ConRail and also provide for a joint stipulation of exact procedures ConRail must undertake to avoid any finding that it has not exercised "due diligence".

Subsection (b) of this section amends section 211(h)(2) of the Regional Rail Reorganization Act of 1973 in two respects.

First, it requires the trustees of each railroad in reorganization to negotiate agency agreements with ConRail, Amtrak, or a profitable railroad, for the payment of only those accounts payable which relate to obligations of the estates identified in paragraph (1) of section 211(h).

Second, it prohibits any district court of the United States having jurisdiction over the reorganization of a railroad in reorganization to limit ConRail, Amtrak, or a profitable railroad from applying any amounts collected as accounts receivable, cash or other current assets, or proceeds of loans made by the U.S. Railway Association, toward payment of the obligations of the estates identified in paragraph (1) of section 211(h). It also provides that any such agreement executed before the date of enactment of this legislation shall be deemed amended to the extent necessary to conform such agreement to the provisions of this amendment.

Subsection (c) of this section amends section 211(h)(4) of the Regional Rail Reorganization Act of 1973 by adding a new subparagraph (d). This new subparagraph provides that any funds held in escrowed accounts by a railroad in reorganization (on the date of enactment of this legislation) which are thereafter determined to be "cash and other current assets of the estate" must be applied to obligations of the estate in the following order:

(1) First, to the reduction of any outstanding loan to ConRail by the U.S. Railway Association, the proceeds of which were used to discharge obligations of such railroad in reorganization.

(2) Second, to the U.S. Railway Association to the extent any such loan has been forgiven by the U.S. Railway Association.

(3) Third, to the payment of any remaining obligation of such railroad in reorganization in accordance with the agency agreement entered into under paragraph (2) of this subsection.

Subsection (d) of this section amends section 211(h)(5)(B) of the Regional Rail Reorganization Act of 1973 by adding a new sentence at the end thereof requiring that ConRail, Amtrak, or a profitable railroad, shall, with respect to each claim for reimbursement under paragraph (4), file a proof of administrative expense claim with the trustees of the railroad in reorganization from which reimbursement is sought. Each such proof of claim must set forth, by category and amount, the obligations of such railroad in reorganization which were paid pursuant to such paragraph (4).

Subsection (e) of this section amends section 210(b) of the Regional Rail Reorganization Act of 1973 to increase from $275 million to $345 million the maximum principal amount of obligations issued by the U.S. Railway Association which may be outstanding at any one time for the purpose of providing loans pursuant to subsections (g) and (h) of section 211. This amendment conforms section 210(b) to section 211(h)(1) by adding to the ceiling on U.S. Railway Association obligational authority the same amount ($70 million) as was added to the authority of the Association to make loans under section 211(h)(1).

Section 105—Protection of Employees' Pension Benefits

This section amends section 303(b)(6) of the Regional Rail Reorganization Act of 1973 to require that ConRail must guarantee the payment of accrued pension benefits provided under any employee pension benefit plan terminated by ConRail (in whole or in part) on or after the date of transfer of such plan to ConRail if such benefits are not guaranteed under title IV of the Employee Retirement Income Security Act of 1974. The amendment further provides that ConRail will be entitled to a loan under section 211(h) of the 1973 Act in an amount required for the adequate funding of pension benefits under all plans transferred to ConRail, whether or not terminated by ConRail. For purposes of such section 211(h), amounts required for such adequate funding are deemed to be expenses of administration of the respective estates of the railroads in reorganization.

Section 106—Basis for Compensation

This section amends section 304(d) of the Regional Rail Reorganization Act of 1973 by adding a new paragraph providing that no

determination of payment for the use of rail properties of a railroad in reorganization, and no determination of value of such rail properties made in connection with any lease agreement, sale agreement, or other agreement which is entered into after the date of enactment of this legislation, to permit the continued operation of such properties to provide rail freight service or rail passenger service, shall be admitted as evidence or used for any other purpose in any action or proceeding for damages or compensation arising under the 1973 Act.

Section 107—Collective Bargaining and FELA Claims

Subsection (a) of this section amends section 504(e) of the Regional Rail Reorganization Act of 1973 to provide that, with respect to employee claims against the estate of a bankrupt railroad arising under collective bargaining before the date of conveyance of the property of the bankrupt railroad to ConRail, such claims shall remain the liability of the estate of such bankrupt railroad. Whoever processes the claim on behalf of the bankrupt railroad shall be entitled to a direct claim as a current expense of administration against the estate of the bankrupt railroad.

Subsection (b) of this section amends section 504(g) of the Regional Rail Reorganization Act of 1973 to provide that any liability of a bankrupt railroad for personal injury claims of its employees arising before the date of conveyance of such property to ConRail or an acquiring railroad shall remain the liability of the bankrupt estate. Whoever processes the claim on behalf of the bankrupt estate shall be entitled to a direct claim as a current expense of administration against such bankrupt estate.

Section 108—Employee Displacement Allowance

Subsection (a) of this section amends section 505(b) of the Regional Rail Reorganization Act of 1973 to change the test period for determining the amount of any employee's displacement allowance from the 12 months preceding February 26, 1975, to the 12 months preceding January 1, 1975. This has the effect of including in the computation of such displacement allowance a 10 percent wage increase which went into effect for railroad employees throughout the nation on January 1, 1975.

Subsection (b) of this section amends section 505(b)(1)(B) of the Regional Rail Reorganization Act of 1973 to provide that the displacement allowance will apply with respect to any employee who has been deprived of employment, which will include both displaced and dismissed employees.

Subsection (c) of this section amends section 505(g) of the Regional Rail Reorganization Act of 1973 to provide that the moving expense benefits of such section 505(g) will be available to employees displaced as a result of an acquisition by a profitable railroad under section 206(d)(4) of the 1973 Act, which acquisition was consummated under section 508 of the 1973 Act, if such employees accept employment offered by ConRail.

Section 109—Noncontract Employees

Subsection (a) of this section amends section 505(i)(2) of the Regional Rail Reorganization Act of 1973 to make it clear that the resolution procedure provided for in such section 505(i)(2) is the

exclusive procedure for resolving noncontract employee disputes over the interpretation or application of any provision of the employee protection benefits of title V of the 1973 Act and that an arbitration decision thereunder will be final and binding on all parties.

Subsection (b) of this section amends section 505(i) of the Regional Rail Reorganization Act of 1973 by adding a new paragraph (3) providing that a noncontract employee entitled to protection shall not be placed in a worse position with respect to any voluntary relief plan benefits or pre-retirement benefits provided under any life or medical insurance plan, but that the level of his benefits must not exceed the level of benefits being afforded to the active noncontract employees of ConRail who are of comparable age, position, and level of compensation.

Subsection (c) of this section amends section 505(b)(4) of the Regional Rail Reorganization Act of 1973 by adding a new sentence providing that the employee protection provisions shall not apply to any noncontract employee whose noncontract position has been abolished.

Section 110—Exemptions

This section amends section 601(b)(4) of the Regional Rail Reorganization Act of 1973 to clarify the jurisdiction of the district courts of the United States having jurisdiction over the estate of a railroad in reorganization after the powers and duties of the Interstate Commerce Commission under section 77 of the Bankruptcy Act were transferred to such court upon conveyance of properties of the bankrupt estate pursuant to the final system plan. The district court having jurisdiction over any such estate is required to proceed to reorganize or liquidate such railroad pursuant to such section 77 in accordance with a fair and equitable plan which complies with the requirements of section 77, or it may convert the proceeding into a bankruptcy proceeding pursuant to any other applicable section or chapter of the Bankruptcy Act if it finds that such action would be in the best interest of such estate.

Section 111—Technical Amendments

This section merely makes technical drafting changes in two sections of the Regional Rail Reorganization Act of 1973.

TITLE II—AMENDMENTS TO THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

Section 201—Obligation Guarantees

Subsection (a) of this section amends section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 to provide that any guarantee entered into by the Secretary with respect to obligations issued to acquire or to rehabilitate and improve facilities or equipment shall constitute general obligations of the United States backed by the full faith and credit of the United States.

Subsection (b) of this section amends section 511(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 to provide that any obligation guaranteed by the Secretary for equipment acquisition, re-

habilitation or improvement of leased equipment may be secured by the lease; and to provide that the prospecting earning power of any equipment or facilities acquired, rehabilitated, or improved may be taken into consideration in determining whether the United States has afforded reasonable security and protection in event of a default by the obligor.

Subsection (c) of this section amends section 511(j) of the Railroad Revitalization and Regulatory Reform Act of 1976, relating to conditions of guarantees, to provide that the Secretary must require the obligor to agree to such terms and conditions as are sufficient to assure that, as long as any principal or interest is due and payable on any obligation guaranteed by the Secretary, such obligor will not make any discretionary dividend payments (except as provided in the new paragraph (2) described below) and will not use any funds or assets from railroad operations for nonrail purposes. The new paragraph (2) referred to above provides that the obligor will not be restricted with respect to making dividend payments from its net income for any fiscal year if the payments do not exceed (when compared to the net income of such obligor for such fiscal year) the ratio which aggregate dividends paid by such obligor during the 5 fiscal years before the granting of the earliest loan guarantee then outstanding bore to aggregate income of such obligor for such period, or 50 percent of the total additions to the retained income of such obligor (computed on a cumulative basis and giving cognizance to dividends paid) during the period commencing with the fiscal year prior to the granting of the earliest loan guarantee then outstanding, whichever is greater. These restrictions on the payment of dividends will not apply with respect to an obligation if, in the event of a default by the obligor, the Secretary would be subrogated to the rights of the lender under section 77(j) of the Bankruptcy Act.

Section 202—Midwest Rail Study

This section would add a new section 907 to title IX of the Railroad Revitalization and Regulatory Reform Act of 1976 providing for a Midwest rail study. Under this section, the Secretary of Transportation is required to conduct a comprehensive study of freight transportation in the Midwest, including a determination of the impact of changes in the capacity of the lock system of the Mississippi River and Illinois Waterway Navigation system upon railroad revenues, railroad branch lines, continued capability to provide rail service, shippers dependent upon rail service, and the need for subsidies to railroads. The Secretary is required to submit the study to Congress within one year after the date of enactment of this legislation. The Secretary of the Army and the Interstate Commerce Commission are required to cooperate with the Secretary of Transportation in the preparation of the study. The Interstate Commerce Commission, in addition, is required to submit to the Secretary of the Army any findings of the Commission with respect to whether expenditure of Federal funds on any construction or reconstruction affecting the capacity of the lock system is required to meet the needs of the public convenience and necessity for adequate freight transportation services in the Midwest.

Section 203—Technical Amendments

This section merely makes technical drafting and clarifying changes in several sections of the Railroad Revitalization and Regulatory Reform Act of 1976.

TITLE III—AMENDMENTS TO THE INTERSTATE COMMERCE ACT

Section 301—Discontinuance and Abandonment Procedures

Subsection (a) of this section amends section 1a(1) of the Interstate Commerce Act, relating to discontinuance and abandonment procedures of the Interstate Commerce Commission. This amendment makes clear that the authority granted to the Interstate Commerce Commission with respect to discontinuance and abandonment does not apply with respect to spur, industrial, team, switching, or sidetracks located entirely within one State or with respect to any street, suburban, or interurban electric railway which is not operated as part of the general system of rail transportation.

Subsection (b) of this section amends section 1a(4) of the Interstate Commerce Act, to provide that if the Interstate Commerce Commission issues a certificate of discontinuance or abandonment without an investigation under paragraph 3 of this section, actual abandonment or discontinuance may take effect in accordance with the certificate rather than 120 days after the date such certificate is issued.

Section 302—Technical Amendments

This section merely makes technical drafting and clarifying changes in various sections of the Interstate Commerce Act.

TITLE IV—GENERAL PROVISIONS

Section 401—Environmental Study

This section requires the Secretary of Health, Education, and Welfare to report to the Congress, within 12 months after the date of enactment of this legislation, with respect to the environmental effects of section 306(i) of the Rail Passenger Service Act and the financial effects on Amtrak and the railroad industry of any repeal or modification of such section. Section 306(i) of the Rail Passenger Service Act provides that section 361 of the Public Health Service Act shall not apply to waste disposal from railroad conveyances operated in rail passenger service. The report required under this section must contain such recommendations as may be necessary or appropriate to balance environmental considerations with operating and financial considerations of the railroad industry, including recommendations with respect to equipping new railroad rolling stock and retrofitting existing railroad rolling stock.

Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

REGIONAL RAIL REORGANIZATION ACT OF 1973

* * * * * * *

TITLE II—UNITED STATES RAILWAY ASSOCIATION

* * * * * * *

RAIL SERVICES PLANNING OFFICE

SEC. 205. (a) * * *

* * * * * * *

(d) DUTIES.—In addition to its duties and responsibilities under other provisions of this Act and under the Railroad Revitalization and Regulatory Reform Act of 1976, the Office shall—

(1) assist the Commission in studying and evaluating any proposal, submitted to the Commission pursuant to section 5 (2) or (3) of the Interstate Commerce Act (49 U.S.C. 5(2) or (3)), for a merger, consolidation, unification or coordination project, joint use of track or other facilities, or acquisition or sale of assets, which involves any common carrier by railroad subject to part I of such Act;

(2) assist the Commission in developing, with respect to economic regulation of transportation, policies which are likely to result in a more competitive, energy-efficient, and coordinated transportation system which utilizes each mode of transportation to its maximum advantage to meet the transportation service needs of the Nation;

(3) assist States and local and regional transportation agencies in making determinations whether to provide rail service continuation subsidies to maintain in operation particular rail properties, by establishing criteria for determining whether particular rail properties are suitable for rail service continuation subsidies, with such criteria to include the following considerations: rail properties are suitable if the cost of the required subsidy for such properties per year to the taxpayers is less than (A) the cost of termination of rail service over such properties measured by increased fuel consumption and operational costs for alternative modes of transportation, (B) the cost to the gross national product in terms of reduced output of goods and services, (C) the cost of relocating or assisting through unemployment, retraining, and welfare benefits to individuals and firms adversely affected thereby, and (D) the cost to the environment measured by damage caused by increased pollution;

(4) conduct an ongoing analysis of the national rail transportation needs, evaluate the policies, plans, and programs of the Commission on the basis of such analysis, and advise the Commission of the results of such evaluation;

(5) within 180 days after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, issue additional regulations, after conducting a proceeding in accord-

ance with the provisions of section 553 of title 5, United States Code, which contain—

(A standards for the computation of subsidies for rail passenger service (except passenger service compensation disputes subject to the jurisdiction of the Commission under section 402(a) of the Rail Passenger Service Act (45 U.S.C. 562(a)), which are consistent with the compensation principles described in the final system plan and which avoid cross subsidization among commuter, intercity, and freight rail services; and

(B) standards for the determination of emergency commuter rail passenger service operating payments pursuant to section 17 of the Urban Mass Transportation Act of 1964;

(6) determine and publish, and from time to time revise and reissue, standards for determining (A) the "revenue attributable to the rail properties," (B) the "available costs of providing service," (C) a "reasonable return on the value," and (D) a "reasonable management fee," as those phrases are used in section 304 of this Act, after a proceeding in accordance with the provisions of section 553 of title 5, United States Code; and

(7) employ and utilize, *until such time as the Director of the Office of Rail Public Counsel has been appointed and confirmed and has taken office*, the services of attorneys and such other personnel as may be [required in order properly to protect] *necessary (A) to protect properly* the interests of those communities and users of rail service which, for whatever reason (such as [their] size or location), might not otherwise be adequately represented in the course of the reorganization process under this Act, [until the assumption of such duties by the Office of Rail Public Counsel pursuant to section 27(4)(d) of the Interstate Commerce Act (49 U.S.C. 27(4)(d)).] *and (B) to perform, pursuant to section 27 of the Interstate Commerce Act (49 U.S.C. 26b), the functions and duties of the Office of Rail Public Counsel.*

The funds authorized to be appropriated to the Office of Rail Public Counsel by section 27(6) of the Interstate Commerce Act (49 U.S.C. 26b(6)) are authorized to be made available for purposes of carrying out the provisions of paragraph (7) of this subsection.

* * * * * * *

FINAL SYSTEM PLAN

SEC. 206. (a) * * *

* * * * * * *

(d) TRANSFERS.—All transfers or conveyances pursuant to the final system plan shall be made in accordance with, and subject to, the following principles:

(1) * * *

* * * * * * *

(5) All properties—

(A) transferred by the Corporation pursuant to sections 206(c)(1)(C) and 601(d) of this Act;

(B) transferred by the Corporation to any State (or local or regional transportation authority), pursuant to subsection (c)(1)(D) of this section, or

(C) transferred by the Corporation to any State, local or regional transportation authority, or the National Railroad Passenger Corporation, within 900 days after the date of conveyance, pursuant to section 303(b)(1) of this Act, to meet the needs of commuter or intercity rail passenger service,

shall be transferred at a value related to the value received from the Corporation pursuant to the final system plan for the transfer to such Corporation of such properties. The value of any such properties, which are transferred pursuant to subparagraph (B) or (C) of this paragraph, shall be adjusted to reflect the value attributable to any applicable maintenance and improvement provided by the Corporation (to the extent the Corporation has not been released from the obligation to pay for such improvements) and the cost to the Corporation of transferring such properties. *Except as otherwise provided with respect to the Corporation pursuant to section 303(c)(2) of this Act, the Corporation, its Board of Directors, and its individual directors shall not be liable to any party, for money damages or in any other manner, solely by reason of the fact that the Corporation transfers property to the National Raiload Passenger Corporation, or to any State (or any local or regional transportation authority), pursuant to section 303 of this Act, to meet the needs of commuter or intercity rail passenger service.*

(6) Notwithstanding any statement to the contrary in the final system plan, a State (or a local or regional transportation authority) shall not be required to deliver to the Corporation a firm commitment to acquire rail properties designated to such State or authority prior to 7 days after the date of enactment of this paragraph.

(7) Any option which is conveyed to the Corporation by a railroad in reorganization, or a railroad leased, operated, or controlled by a railroad in reorganization, with respect to the acquisition by the Corporation, on behalf of a State or a local or regional transportation authority, of rail properties designated under section 206(c)(1)(D) of this title, shall be deemed to remain outstanding and in effect until 7 days after the date of enactment of the Rail Amendments of 1976, notwithstanding any contrary provision in such option. The exercise by the Corporation of any such option shall be effective if it is made prior to the expiration of such 7-day period and in the manner prescribed in such option.

* * * * * * *

OBLIGATIONS OF THE ASSOCIATION

SEC. 210. (a) GENERAL.—* * *

(b) MAXIMUM OBLIGATIONAL AUTHORITY.—The aggregate [amount of obligations of the Association issued under this section which may be outstanding at any one time shall not exceed $275,000,000.] *principal amount (exclusive of interest or additions to principal on account*

of accrual of interest) of obligations issued by the Association under this section which may be outstanding at any one time shall not exceed $345,000,000. No obligations or proceeds thereof shall be issued or made available after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976 except—

(1) to meet existing or potential commitments for loans under section 211 of this title made or applied for prior to January 1, 1976; and

(2) for the purpose of providing loans pursuant to subsections (g) and (h) of section 211 of this title.

* * * * * * *

LOANS

SEC. 211. (a) GENERAL.—* * *

[(h) LOANS FOR PAYMENT OF OBLIGATIONS.—(1) The Association is authorized, subject to the limitations set forth in section 210(b) of this title, to enter into loan agreements, in amounts not to exceed $230,000,000 in the aggregate, with the Corporation, the National Railroad Passenger Corporation, and any profitable railroad to which rail properties are transferred or conveyed pursuant to section 303(b)(1) of this Act, under which the Corporation, the National Railroad Passenger Corporation, and any profitable railroad entering into such agreement will agree to meet existing or prospective obligations of the railroads in reorganization in the region which the Association, in accordance with procedures established by the Association, determines should be paid by the Corporation, the National Railroad Passenger Corporation, or a profitable railroad, on behalf of the transferors, in order ot avoid disruptions in ordinary business relationships. Such obligations shall be limited to amounts claimed by suppliers (including private car lines) of materials or services utilized in current rail operations, claims by shippers arising from current rail services, payments to railroads for settlement of current interline accounts, claims of employees arising under the collective bargaining agreements of the railroads in reorganization in the region and subject to section 3 of the Railway Labor Act, claims of all employees or their personal representatives for personal injuries or death and subject to the provisions of Employers' Liability Acts (45 U.S.C. 51–60), and amounts required for adequate funding of accrued pension benefits existing at the time of a conveyance or discontinuance of service under employee pension benefits plans described in section 505(a) of this Act. The Association shall not make such a loan unless it first finds that the loan is for the purpose of paying obligations with respect to accrued pension plans referred to in the preceding sentence or that the Corporation, the National Railroad Passenger Corporation, or a profitable railroad is entitled to a loan pursuant to subsections (e) and (g) of section 504 of this Act, or unless it first finds that—

[(A) provision for the payment of such obligations was not included in the financial projections of the final system plan;

[(B) such obligations arose from rail operations prior to the date of conveyance of rail properties pursuant to section 303(b)(1) of this Act and are, under other applicable law, the responsibility of a railroad in reorganization in the region;

[(C) the Corporation, the National Railroad Passenger Corporation, or a profitable railroad has advised the Association that the direct payment of such obligations by the Corporation, the National Railroad Passenger Corporation or profitable railroad is necessary to avoid disruptions in ordinary business relationships;

[(D) the transferor is unable to pay such obligations within a reasonable period of time; and

[(E) with respect to loans made to the Corporation, the procedures to be followed by the Corporation, in seeking reimbursement from the railroads in reorganization in the region for obligations paid on their behalf under this subsection, have been jointly agreed to by the Finance Committee and the Corporation.]

(h) LOANS FOR PAYMENT OF OBLIGATIONS.—(1)(A) The Association is authorized, subject to the limitations set forth in section 210(b) of this title, to enter into loan agreements, in amounts not to exceed, at any given time, $300,000,000 in the aggregate principal amount, with the Corporation, the National Railroad Passenger Corporation, and any profitable railroad to which rail properties are transferred or conveyed pursuant to section 303(b)(1) of this Act, under which the Corporation, the National Railroad Passenger Corporation, and any profitable railroad entering into such agreement will agree to meet existing or prospective obligations of the railroads in reorganization in the region which the Association, in accordance with procedures established by the Association, determines should be paid by the Corporation, the National Railroad Passenger Corporation, or a profitable railroad, on behalf of such railroads in reorganization, in order to avoid disruptions in ordinary business relationships. Such obligations shall be limited to—

(i) amounts claimed by suppliers (including private car lines) of materials or services utilized or purchased in current rail operations;

(ii) claims by shippers arising from current rail services;

(iii) payments to railroads for settlement of current interline accounts and all other current accounts and obligations;

(iv) claims of employees arising under the collective-bargaining agreements of the railroads in reorganization in the region and subject to section 3 of the Railway Labor Act (including claims of accrued vacation and wages and similar claims arising in connection with labor and services performed);

(v) claims of all employees or their personal representatives for personal injuries or death and subject to the provisions of Employers' Liability Act (45 U.S.C. 51–60);

(vi) amounts required for adequate funding of accrued pension benefits existing at the time of a conveyance or discontinuance of service under employee pension benefit plans described in section 505(a) of this Act;

(vii) amounts required to provide adequate funding for payment, when due, of claims deriving from membership in any employee voluntary relief plan which provides benefits to its members and their beneficiaries in the event of sickness, accident, disability, or death, and to which both a railroad in reorganization and employee members have made contributions; and

(viii) amounts required to provide adequate funding for payment, when due, of medical and life insurance benefits for employees (whether or not their employment was governed by a collective bargaining agreement) on account of their service with a railroad in reorganization prior to the date of conveyance pursuant to section 303(b)(1), and for individuals who retired, prior to such date of conveyance, from service with a railroad in reorganization.

(B) The Association shall make a loan pursuant to subparagraph (A) of this paragraph if, notwithstanding any other requirement of this subsection, it finds that the Corporation, the National Railroad Passenger Corporation, or a profitable railroad is entitled to a loan pursuant to section 303(b)(6), 504(e), or 504(g) of this Act, or if, with respect to an obligation referred to in subparagraph (A) of this paragraph, it finds that—

(i) provision for the payment of such obligation was not included in the financial projections of the final system plan;

(ii) such obligation arose from rail operations prior to the date of conveyance of rail properties pursuant to section 303(b)(1) of this Act and is, under other applicable law, the responsibility of a railroad in reorganization in the region, and a claim is presented to a railroad in reorganization or the Corporation within 2 years after the date of enactment of the Rail Amendments of 1976;

(iii) the Corporation, the National Railroad Passenger Corporation, or a profitable railroad has advised the Association that the direct payment of such obligation by the Corporation, the National Railroad Passenger Corporation, or a profitable railroad is for services or materials, the furnishing of which served to avoid disruptions in ordinary business relationships prior to the date of conveyance of rail properties pursuant to section 303(b)(1) of this Act, or is necessary to avoid postconveyance disruptions in ordinary business relationships;

(iv) the transferor is unable to pay such obligation within a reasonable period of time; and

(v) with respect to loans made to the Corporation, the procedures to be followed by the Corporation, in seeking reimbursement from a railroad in reorganization in the region for an obligation paid on its behalf under this subsection, have been jointly agreed to by the Finance Committee and the Corporation, and the joint agreement provides—

(I) for the Corporation to receive reimbursement from the Association for any expenses incurred in seeking reimbursement from any railroad in reorganization in the region of an obligation paid on its behalf under this subsection; and

(II) for a point stipulation of the exact procedures the Corporation must undertake to avoid the finding, referred to in paragraph (6)(A)(i) of this subsection that it has not exercised due diligence.

(2) The trustees of each railroad in reorganization in the region shall attempt to negotiate agency agreements with the Corporation, the National Railroad Passenger Corporation, or a profitable railroad

for the processing of all accounts receivable and accounts payable attributable to operations prior to the conveyance of property pursuant to section 303(b)(1) of this Act *and for the payment of only those accounts payable which relate to obligations of the estates identified in paragraph (1) of this subsection.* If any railroad in reorganization in the region fails to conclude such an agreement within a reasonable time prior to such conveyance, the applicable reorganization courts, after giving all parties an opportunity to be heard, shall prescribe the terms of such an agency arrangement by order, giving due consideration to the need, wherever possible, to make such agreements uniform among the various estates. *Nothing in this subsection shall be construed as permitting any district court of the United States having jurisdiction over the reorganization of a railroad in reorganization in the region to enjoin, restrain, or limit the Corporation, the National Railroad Passenger Corporation, or a profitable railroad from applying, to payment of the obligations of the estates identified in paragraph (1) of this subsection, amounts collected as (A) accounts receivable pursuant to this paragraph, (B) cash or other current assets identified pursuant to paragraph (3) of this subsection, or (C) proceeds of loans pursuant to paragraph (1) of this subsection. Any agency agreement executed prior to the date of the enactment of the Rail Amendments of 1976 shall be deemed amended to the extent necessary to conform such agreement or order to the provisions of this paragraph. Nothing in this paragraph shall be construed to affect any payment made prior to such date of enactment with respect to obligations other than those identified in paragraph (1) of this subsection.*

* * * * * * *

(4)(A) * * *

* * * * * * *

(D) Any funds held in an escrow account by a railroad in reorganization on the date of enactment of the Rail Amendments of 1976 which are thereafter determined to be cash and other current assets of the estate for purposes of paragraph (3) of this subsection shall be applied as follows—

(i) first, to the reduction of any outstanding loans to the Corporation by the Association, pursuant to paragraph (1) of this subsection, the proceeds of which were used to discharge obligations of such railroad in reorganization;

(ii) second, to the Association to the extent of any such loans which have been forgiven pursuant to paragraph (5) of this subsection; and

(iii) third, to the payment of any remaining obligations of such railroad in reorganization, in accordance with the provisions of the agency agreement entered into pursuant to paragraph (2) of this subsection.

* * * * * * *

(5)(A) If, at any time, the Finance Committee of the Association determines that the failure of the Corporation to receive full reimbursement with interest from the estate of a railroad in reorganization in the region for any obligation of such estate paid pursuant to this subsection could adversely affect the fairness and equity of the trans-

fers and conveyances pursuant to section 303(b)(1) of this Act, or that the failure of the National Railroad Passenger Corporation to receive such full reimbursement plus interest for any such obligation would be contrary to the public interest, the Association shall forgive the indebtedness, plus accrued interest, of the Corporation or of the National Railroad Passenger Corporation incurred pursuant to paragraph (1) of this subsection in the amount recommended by the Finance Committee. The Association shall have a direct claim, as a current expense of administration of the estate of such railroad in reorganization, equal to the amount by which loans of the Corporation or of the National Railroad Passenger Corporation, plus interest, have been forgiven. Such direct claim shall not be subject to any reduction by way of setoff, cross-claim, or counter-claim which the estate of such railroad in reorganization may be entitled to assert against the Corporation, the National Railroad Passenger Corporation, the Association, or the United States.

(B) The direct claim of the Association under this paragraph, and any direct claim authorized under paragraph (4) of this subsection, shall be prior to all other administrative claims of the estate of a railroad in reorganization, except claims arising under trustee's certificates or from default on the payment of such certificates. *The Corporation, the National Rail Passenger Corporation, or a profitable railroad, as the case may be, shall, with respect to each direct claim for reimbursement pursuant to paragraph (4) of this subsection, file a proof of administrative expense claim with the trustees of the railroad in reorganization from whom reimbursement is sought. Each such proof of administrative expense claim shall set forth, by category and amount, the obligations of such railroad in reorganization which were paid pursuant to such paragraph (4).*

(6) Notwithstanding any other provision of this subsection, the Association shall forgive any loan made to the Corporation or the National Railroad Passenger Corporation pursuant to this subsection, plus accrued interest thereon, on the 3rd anniversary date of any such loan, except that the Association shall not forgive any loan or portion thereof, in accordance with this paragraph, if—

(A) the Finance Committee makes an affirmative finding, with respect to such loan or portion thereof, that—

(i) the Corporation has not excercised due diligence in executing the procedures adopted pursuant to paragraph (1) [(E)] *(B)(v)* of this subsection, and

(ii) the failure of the Association to forgive such loan or portion thereof will not adversely affect the ability of the Corporation to become financially self-sustaining;

(B) the Finance Committee so directs the Association; and

(C) neither House of the Congress disapproves such affirmative finding and direction, in accordance with the following provisions of this paragraph.

A copy of each such finding, the reasons therefor, and such direction made by the Finance Committee, together with the comments and recommendations thereon of the Board of Directors of the Association, shall be transmitted to the Congress by the Association within 10 days after the date on which the Finance Committee makes such finding and

direction, or if not so transmitted, shall be transmitted by the Finance Committee. Each such finding and direction so transmitted shall become effective immediately, and shall remain in effect, unless, within the first period of 30 calendar days of continuous session of Congress after the date of transmittal of such finding and direction to Congress, either House of Congress disapproves such finding and direction in accordance with the procedures specified in section 1017 of the Congressional Budget and Impoundment Control Act of 1974 (31 U.S.C. 1407). For purposes of this paragraph, continuity of session of Congress is broken only in the circumstances described in section 1011(5) of that Act 31 U.S.C. 1401(5)).

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TITLE III—CONSOLIDATED RAIL CORPORATION

* * * * * * *

VALUATION AND CONVEYANCE OF RAIL PROPERTIES

SEC. 303. (a) * * *

(b) CONVEYANCE OF RAIL PROPERTIES.—(1) * * *

* * * * * * *

(6) Notwithstanding anything to the contrary contained in this Act or any other provision of law, the special court shall include in its order such further directions as may be necessary to assure (A) that the operation and administration of the employee pension benefit plans described in section 505(a) of this Act shall be continued, without termination or interruption, by the Corporation until such time as the Corporation elects to amend or terminate any such plan, in whole or in part; and (B) that appropriate transfers and assignments with respect to all rights and obligations relating to such plans shall be made to the Corporation for such purposes, without prejudice to payment of consideration for whatever rights any railroad in reorganization may have in any residual assets under any such employee pension benefit plan. No court shall enter any judgment against the Corporation with respect to any such rights, except that the special court may enter such a judgment in an order issued by its pursuant to subsection (c) of this section, after taking into consideration the rights and obligations transferred pursuant to this paragraph. All liabilities as an employer shall be imposed solely upon the railroad in reorganization in the event such plan is terminated, in whole or in part, by the Corporation within 1 year after the date of such transfer or assignment (except liabilities as an employer under the Employee Retirement Income Security Act of 1974 for benefits accruing during such period), *except that in any case in which the Corporation, on or after the date of transfer or assignment as provided by this paragraph, terminates in whole or in part any such plan, the benefits under which are not guaranteed under title IV of the Employee Retirement Income Security Act of 1974, the Corporation shall guarantee the payment when due of the accrued pension benefits provided for thereunder at the time of*

termination. The Corporation shall be entitled to a loan pursuant to section 211(h) of this Act in an amount required for the adequate funding of accrued pension benefits under all plans transferred or assigned to the Corporation in accordance with this paragraph (whether or not terminated by the Corporation). For purposes of such section 211(h) and notwithstanding any other provision of Federal or State law, amounts required for such adequate funding shall be deemed to be expenses of administration of the respective estates of the railroads in reorganization, due and payable as of the date of transfer or assignment of the plans to the Corporation.

* * * * * * *

(c) FINDINGS AND DISTRIBUTION.—(1) * * *

(2) If the special court finds that the terms of one or more exchanges for securities, certificates of value and other benefits are not fair and equitable to an estate of a railroad in reorganization, or to a railroad leased, operated, or controlled by a railroad in reorganization (taking into consideration compensable unconstitutional erosion, if any, which the special court finds to have occurred in the estate of each such railroad, during the bankruptcy proceeding with respect to such railroad), which has transferred rail properties pursuant to the final system plan, it may—

(A) enter a judgment reallocating the securities[,] *and* certificates of value [of the Corporation] in a fair and equitable manner if [it has] *they have* not been fairly allocated among the railroads transferring rail properties to the Corporation or any subsidiary thereof, except that at least one share of series B preferred stock and one certificate of value shall be allocated to each such railroad; and

(B) if the lack of fairness and equity cannot be completely cured by a reallocation of the [Corporation's] securities [,] *and* certificates of value, order the Corporation to provide for the transfer to the railroad of other securities [, certificates of value] of the Corporation or certificates of value issued by the Association as designated in the final system plan in such nature and amount as would make the exchanges fair and equitable; and

(C) enter a judgment against the Corporation if the judgment would not endanger the viability or solvency of the Corporation.

(3) If the special court finds that the terms of one or more conveyances of rail properties to a profitable railroad operating in the region, State, or responsible person in accordance with the final system plan are not fair and equitable, it shall enter a judgment against such profitable railroad, State, or responsible person. If the special court finds that the terms of one or more conveyances or exchanges for securities or other benefits are fairer and more equitable than is required as a constitutional minimum, then it shall order the return of any excess securities, certificates of value, or compensation to the Corporation or a profitable railroad, State, or responsible person so as not to exceed the constitutional minimum standard of fairness and equity. The special court shall also find the amount of the payments, if any, which each profitable railroad has made on behalf of a transferor railroad in reorganization in accordance with section 211(h) of this Act,

for which payment the profitable railroad has not been reimbursed, as provided in section 211(h). Notwithstanding any other provision of this paragraph or of paragraph (4), the special court shall order the return to any such profitable railroad from compensation deposited by such profitable railroad pursuant to [section 303] *subsection* (a)(2) *of this section*, of any such amount so found together with interest at the rate provided in section 211(h). In making any finding under this paragraph, the special court shall take into consideration compensable unconstitutional erosion, if any, which it finds to have occurred in the estate of a railroad in reorganization in the region, or of a railroad leased, operated, or controlled by such a railroad, during the bankruptcy proceeding with respect to such railroad.

* * * * * * *

(5) Whenever the special [court orders, pursuant to section 303(b)(1) of this title, the transfer or conveyance to the Corporation or any subsidiary thereof of rail properties designated under section 206(c)(1)(C) or (D) of this Act, to the National Railroad Passenger Corporation, to a profitable railroad, or to a State, or responsible person (including a government entity), the United States shall pay any judgment entered against the Corporation with respect to the conveyance of any such rail properties or against the National Railroad Passenger Corporation, such profitable railroad, State, or responsible person, plus interest thereon at such rate as is constitutionally required.] *court, pursuant to subsection (b)(1) of this section, orders the transfer or conveyance of rail properties—*

(A) designated under section 206(c)(1) (C) or (D) of this Act, to the Corporation or any subsidiary thereof, the United States shall indemnify the Corporation against any costs or liabilities imposed on the Corporation as the result of any judgment entered against the Corporation, with respect to such properties, under paragraph (2) of this subsection; and

(B) to the National Railroad Passenger Corporation, a profitable railroad operating in the region, a State, or a responsible person (including a governmental entity), the United States shall indemnify the National Railroad Passenger Corporation, such profitable railroad, State, or responsible person against any costs of liabilities imposed thereon as a result of any judgment entered against the National Railroad Passenger Corporation, such profitable railroad, State, or responsible person, as the case may be, under paragraph (3) of this subsection,

plus interest on the amount of such judgment at such rate as is constitutionally required. The United States may, in its discretion, represent the Corporation of the National Railroad Passenger Corporation, such profitable railroad, State or responsible persons, in any proceedings before the special court that could result in such a judgment against the Corporation under paragraph (2) of this subsection or against the National Railroad Passenger Corporation, such profitable railroad, State or responsible person, under paragraph (3) of this subsection. The Corporation, the National Railroad Passenger Corporation, any profitable railroad, State, or responsible person, which is represented by the United States of America shall cooperate diligently in

whatever manner the United States shall reasonably request of it in connection with such proceedings. Neither the Corporation, or its subsidiaries, nor the National Railroad Passenger Corporation, any profitable railroad, State or responsible person, shall be obligated to reimburse the United States for any moneys paid by the United States pursuant to this section.

* * * * * * *

TERMINATION AND CONTINUATION OF RAIL SERVICES

* * * * * * *

SEC. 304. (a) * * *

(d) RAIL FREIGHT SERVICE.—(1) * * *

* * * * * * *

(4) No determination of reasonable payment for the use of rail properties of a railroad in reorganization in the region, and no determination of value of rail properties of such a railroad (including supporting or related documents or reports of any kind) which is made in connection with any lease agreement, contract of sale, or other agreement or understanding which is entered into after the date of enactment of the Rail Amendments of 1976—

(A) pursuant to this section; or

(B) pursuant to section 402 of this Act or section 17 of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1613),

shall be admitted as evidence, or used for any other purpose, in any civil action, or any other proceeding for damages or compensation, arising under this Act.

* * * * * * *

TITLE V—EMPLOYEE PROTECTION

* * * * * * *

COLLECTIVE-BARGAINING AGREEMENTS

SEC. 504. (a) INTERIM APPLICATION.—* * *

* * * * * * *

(e) LIABILITY FOR EMPLOYEE CLAIMS.—In all cases of claims by employees, arising under the collective bargaining agreements of the railroads in reorganization in the region, and subject to section 3 of the Railway Labor Act (45 U.S.C. 153), the Corporation, the National Railroad Passenger Corporation, or an acquiring carrier, as the case may be, shall assume responsibility for the processing of any such claims, and payment of those which are sustained or settled on or subsequent to the date of conveyance, under section 303(b)(1) of this Act, and shall be entitled to direct reimbursement from the Association pursuant to section 211(h) of this Act. *Any liability of an estate of a railroad in reorganization to its employees which is assumed, processed, and paid, pursuant to this subsection, by the Corporation, the National Railroad Passenger Corporation, or an acquiring carrier shall remain the preconveyance obligation of the estate of such railroad for purposes of section 211(h)(1) of this Act. The Corporation, the National Railroad Passenger Corporation, an acquiring carrier, or the Association, as the case may be, shall be entitled to a direct*

claim as a current expense of administration, in accordance with the provisions of section 211(h) of this Act (other than paragraph (4)(A) thereof), for reimbursement (including costs and expenses of processing such claims) from the estate of the railroad in reorganization on whose behalf such obligations are discharged or paid. In those cases in which claims for employees were sustained or settled prior to such date of conveyance, it shall be the obligation of the employees to seek satisfaction against the estate of the railroads in reorganization which were their former employers.

(g) ASSUMPTION OF PERSONAL INJURY CLAIMS.—All cases or claims by employees or their personal representatives for personal injuries or death against a railroad in reorganization in the region arising prior to the date of conveyance of rail properties, pursuant to section 303 of this Act, shall be assumed by the Corporation or an acquiring railroad, as the case may be. The Corporation or the acquiring railroad shall process and pay any such claims that are sustained or settled, and shall be entitled to direct reimbursement from the Association pursuant to section 211(h) of this Act. *Any liability of an estate of a railroad in reorganization which is assumed, processed, and paid, pursuant to this subsection, by the Corporation or an acquiring railroad shall remain the preconveyance obligation of the estate of such railroad for purposes of section 211(h)(1) of this Act. The Corporation, an acquiring railroad, or the Association, as the case may be, shall be entitled to a direct claim as a current expense of administration, in accordance with the provisions of section 211(h) of this Act (other than paragraph (4)(A) thereof), for reimbursement (including costs and expenses of processing such claims) from the estate of the railroad in reorganization on whose behalf such obligations are discharged or paid.*

EMPLOYEE PROTECTION

SEC. 505. (a) EQUIVALENT POSITION.—* * *

(b) MONTHLY DISPLACEMENT ALLOWANCE.—A protected employee, who has been deprived of employment or adversely affected with respect to his compensation shall be entitled to a monthly displacement allowance computed as follows:

(1) Said allowance shall be determined by computing the total compensation received by the employee, including vacation allowances and monthly compensation guarantees, and his total time paid for during the 12 full calendar months immediately preceding [February 26, 1975,] *January 1, 1975*, or in the case of a supplementary transaction, the 12 full calendar months immediately preceding the effective date of such transaction in which he performed compensated service more than 50 per centum of each of such months, based upon his normal work schedule, and by dividing separately the total compensation and the total time paid for by 12, thereby producing the average monthly compensation and average monthly time paid for; and, if an employee's compensation in his current position is less in any month in which he performs work than the aforesaid average compensation, he shall be paid the difference, less any time lost on account of voluntary absences other than vacations, but said protected employee shall

be compensated in addition there to at the rate of the position filled for any time worked in excess of his average monthly time, *Provided, however*, That—

(A) in determining compensation in his current employment the protected employee shall be treated as occupying the position, producing the highest rate of pay to which his qualifications and seniority entitle him under the applicable collective bargaining agreement and which does not require a change in residence;

(B) *with respect to a protected employee who has been deprived of his employment*, the said monthly displacement allowance shall be reduced by the full amount of any unemployment compensation benefits received by the protected employee and shall be reduced by an amount equivalent to any employment subject to the Railroad Retirement Act and 50 per centum of any earnings in any employment not subject to the Railroad Retirement Act;

(C) a protected employee's average monthly compensation shall be adjusted from time to time thereafter to reflect subsequent general wage increases;

(D) should a protected employee's service total less than 12 months in which he performs more than 50 per centum compensated service based upon his normal work schedule in each of said months, his average monthly compensation shall be determined by dividing separately the total compensation received by the employee and the total time for which he was paid by the number of months in which he performed more than 50 per centum compensated service based upon his normal work schedule; and

(E) the monthly displacement allowance provided by this section shall in no event exceed the sum of $2,500 in any month except that such amount shall be adjusted to reflect subsequent general wage increases.

(2) A protected employee's average monthly compensation under this section shall be based upon the rate of pay applicable to his employment and shall include increases in rates of pay not in fact paid but which were provided for in national railroad labor agreements generally applicable during the period involved.

(3) If a protected employee who is entitled to a monthly displacement allowance served as an agent or a representative of a class or craft of employees on either a full- or part-time basis in the 12 months immediately preceding [February 26, 1975] *January 1, 1975*, or the effective date of the supplemental transaction, as the case may be, his monthly displacement allowance shall be computed by taking the average of the average monthly compensation and average monthly time paid for of the protected employees immediately above and below him on the same seniority roster or his own monthly displacement allowance, whichever is greater.

(4) If a noncontract employee exercises seniority rights in a craft or class of employees protected upnder this Act, then, during the period such seniority is exercised, such noncontract employee

shall be entitled to the same protection offered under this Act to employees in the craft or class in which such seniority is exercised. However, in computing the monthly displacement allowance, the last 12 months prior to [February 26, 1975,] *January 1, 1975*, during which such noncontract employee performed service under a collective-bargaining agreement, shall be used. *This paragraph shall not apply to any noncontract employee whose noncontract position has been abolished.*

(g) MOVING EXPENSE BENEFITS.—Any protected employee who is required to make a change of residence as the result of a transaction shall be entitled to the following benefits—

(1) Reimbursement for all expenses of moving his household and other personal effects, for the traveling expense of himself and members of his family, including living expenses for himself and his family, and for his own actual wage loss, not to exceed 10 working days. *Provided*, That the Corporation or acquiring railroad shall, to the same extent provided above, assume said expenses for any employee furloughed within 3 years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbursement shall be paid under the provisions of this section unless such claim is presented to the Corporation or acquiring railroad within 90 days after the date on which the expenses were incurred.

(2) (A) (i) If the protected employee owns, or is under a contract to purchase, his own home in the locality from which he is required to move and elects to sell said home, he shall be reimbursed for any loss suffered in the sale of his home for less than its fair market value. In each case the fair market value of the home in question shall be determined as of a date sufficiently prior to the date of the transaction so as to be unaffected thereby. The Corporation or an acquiring railroad shall in each instance be afforded an opportunity to purchase the home at such fair market value before it is sold by the employee to any other person.

(ii) A protected employee may elect to waive the provisions of paragraph (2) (A) (i) of this subsection and to receive, in lieu thereof, an amount equal to his closing costs which are ordinarily paid for and assumed by a seller of real estate in the jurisdiction in which the residence is located. Such costs shall include a real estate commission paid to a licensed realtor (not to exceed $3,000 or 6 per centum of sale price, whichever is less), and any prepayment penalty required by the institution holding the mortgage; such costs shall not include the payment of any "points" by the seller.

(B) If the protected employee holds an unexpired lease on a dwelling occupied by him as his home, he shall be protected from all loss and cost in securing the cancellation of said lease.

(C) No claim for costs or loss shall be paid under the provisions of this paragraph unless the claim is presented to the Corporation or an acquiring railroad within 90 days after such costs or loss are incurred.

(D) Should a controversy arise with respect to the value of the home, the costs or loss sustained in its sale, the costs or loss under a contract for purchase, loss or cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee, or his representative, and the Corporation or an acquiring railroad. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected in the following manner: One to be selected by the employee or his representative and one by the Corporation or acquiring railroad and these two, if unable to agree upon a valuation within 30 days, shall endeavor by argument within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days a third qualified real estate appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

In addition, protected employees displaced as a result of an acquisition pursuant to section 206(d)(4) of this Act (which acquisition was consummated pursuant to section 508 of this title) shall, upon acceptance of employment offered by the Corporation, be entitled to the benefits of paragraphs (1) and (2) of this subsection.

* * * * * * *

(i) NONCONTRACT EMPLOYEES.—Compensation, severance, termination, and moving expense benefits for employees not governed by a collective-bargaining agreement shall be consistent with subsections (b), (c), (e), (f), and (g) of this section and shall be in accordance with the following provisions:

(1) A protected employee, whose employment is not governed by the terms of a collective-bargaining agreement, may be required by the Corporation, upon reasonable notice, to transfer to any position on the Corporation's system. If such transfer requires a change in residence, the employee may either voluntarily suspend his employment at his home location in lieu of protective benefits, or he may sever his employment and receive a benefit computed in accordance with subsection (e) or (f) of this section. These provisions supersede all provisions or conditions in subsection (d) of this section.

(2) If any dispute arises between the Corporation and a noncontract employee regarding the interpretation or application of any provision of this title, the Corporation shall establish a resolution procedure with arbitration as the final step. *Such resolution procedure shall be the exclusive means available to the parties for resolving such dispute, and any arbitration decision rendered*

shall be final and binding on all parties. Either party may request arbitration, and the cost and expenses of such arbitration shall be shared equally by the parties.

(3) Except as otherwise provided in this title, a protected employee whose employment is not governed by the terms of a collective bargaining agreement and who has been deprived of employment shall not, during the period in which he is entitled to protection, be placed in a worse position with respect to any voluntary relief plan benefits or preretirement benefits provided under any life or medical insurance plan, except that the level of benefits to which such an employee is entitled under this paragraph shall not exceed the level of benefits which is afforded to the Corporation's active noncontract employees of comparable age, position, and level of compensation.

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TITLE VI—MISCELLANEOUS PROVISIONS

RELATIONSHIP TO OTHER LAWS

SEC. 601. (a) ANTITRUST.— * * *

(b) COMMERCE, SECURITIES, AND BANKRUPTCY.—(1) * * *

* * * * * * *

(4) The powers and duties of the Commission under section 77 of the Bankruptcy Act (11 U.S.C. 205), with respect to a railroad in reorganization in the region which conveys all or substantially all of its designated rail properties to the Corporation or a subsidiary thereof, or to profitable railroads in the region, pursuant to the final system plan, and the requirement that plans of reorganization be filed with the Commission, shall cease upon the date of such conveyance. The powers and duties of the Commission under section 77 of the Bankruptcy Act shall also so terminate, as of the date of enactment of this paragraph, with respect to any railroad reorganization under such section 77 but not subject to this Act which (1) does not operate any line of railroad, and (2) has transferred all or substantially all of its rail properties to a railroad in reorganization in the region which was subject to this Act prior to the date of enactment of this paragraph. [Thereafter, such powers and duties of the Commission shall be vested in the district court of the United States which has jurisdiction of the estate of any such railroad in reorganization at the time of such conveyance. Such court shall proceed to reorganize or liquidate such railroad in reorganization pursuant to such section 77 on such terms as the court deems just and reasonable, or pursuant to any other provisions of the Bankruptcy Act, if the court finds that such action would be in the best interests of such estate.] *Thereafter, the district court of the United States which has jurisdiction of the estate of any such railroad in reorganization at the time of such conveyance shall proceed to reorganize or liquidate such railroad in reorganization pursuant to such section 77, in accordance with a fair and equitable plan which complies with the requirements of such section, or such court may convert the proceedings into a bankruptcy proceeding pursuant to any other applicable section or chapter of the Bankruptcy Act, if the court*

finds that such action would be in the best interests of such estate. This paragraph does not affect any obligation of any carrier by railroad subject to regulation under the Interstate Commerce Act. The powers and duties of the Commission under section 77 of the Bankruptcy Act shall continue in effect only to the extent that the railroad in reorganization continues to operate any line of railroad.

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RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

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TITLE III—REFORM OF THE INTERSTATE COMMERCE COMMISSION

* * * * * * *

SECURITIES

SEC. 308. (a) (1) * * *

* * * * * * *

(d) (1) The amendments made by subsection (a) of this section shall take effect on the 60th day after the date of enactment of this Act, but shall not apply to any bona fide offering of a security made by the issuer, or by or through an underwriter, before such 60th day.

(2) The amendment made by subsection [(c)] (*b*) of this section shall not apply to any report by any person with respect to a fiscal year of such person which began before the date of enactment of this Act.

(3) The amendment made by subsection (c) of this section shall take effect on the 60th day after the date of enactment of this Act.

* * * * * * *

TITLE V—RAILROAD REHABILITATION AND IMPROVEMENT FINANCING

* * * * * * *

CAPITAL NEEDS STUDY

SEC. 504. (a) DEFERRED MAINTENANCE STATEMENT.—Within 180 days after the date of enactment of this Act, each railroad designated by the Commission as a class I railroad (other than a railroad subject to reorganization pursuant to the Regional Rail Reorganization Act of 1973) shall prepare and submit to the Secretary a full and complete statement (1) of such railroad's deferred maintenance and delayed capital expenditures, as of December 31, 1975, and (2) of the projected amounts of appropriate maintenance to be performed and capital expenditures to be made for such railroad's facilities *and equipment*, during each of the years from 1976 through 1985. Each railroad shall

submit such additional information as may be required from it by the Secretary, in connection with his duties under section 503 of this title or under this section, prior to July 1, 1977, including the projected sources of and uses for the funds required by such railroad for such projected program.

* * * * * * *

GUARANTEE OF OBLIGATIONS

SEC. 511. (a) GENERAL.— * * *

* * * * * * *

[(c) VALUATION.—Before granting any application for a guarantee or a commitment to guarantee any obligation, the Secretary shall make a determination of the value of the facilities or equipment which are or will be financed or refinanced by such obligation. Such determination of value shall be conclusive and not subject to review in any court.]

(c) FULL FAITH AND CREDIT.—All guarantees entered into by the Secretary under this section shall constitute general obligations of the United States of America backed by the full faith and credit of the United States of America.

* * * * * * *

(h) [PREQUISTES] *PREREQUISITES* for GUARANTEES.—No obligation shall be guaranteed and no comment shall be made to guarantee any obligation under this section, unless and until the Secretary makes a finding in writing that—

(1) an obligation for equipment acquisition, rehabilitation, or improvement is secured (*A*) by the particular equipment which is to be financed or refinanced by such obligation, *or* (*B*) *in the case of the rehabilitation or improvement of leased equipment, by the lease*;

(2) payment of the obligation is required by its terms to be made within 25 years from the date of its execution;

(3) the financing or refinancing is justified by the present and probable future demand for rail services to be rendered by the applicant and will serve to meet demonstrable needs for rail services and to provide shippers with improved service;

(4) the applicant has given reasonable assurances that the facilities or equipment to be acquired, rehabilitated, or improved with the proceeds of the obligation will be economically and efficiently utilized;

[(5) the probable value of any equipment or facilities to be improved, rehabilitated, or acquired is sufficient to provide the United States with reasonable security and protection in the event of default by the obligor, in the case of repossession by the holder of the obligation or in the case of possession or purchase by the Secretary; and]

(5) the prospective earning power of the applicant, or the value or prospective earning power of any equipment or facilities to be improved, rehabilitated, or acquired (or any combination of the foregoing), is sufficient to provide the United States with reasonable security and protection in the event of default by the obligor, in the case of repossession by the holder of the obligation, or in the case of possession, purchase, or assumption of the lease by the Secretary, except that if the value or prospective earning power of such equipment or facilities is equal to or greater than the amount of the obligation to be guaranteed, the Secretary may not, on the basis of the lack of prospective earning power of the applicant, find that the United States will not be provided with the reasonable security and protection referred to in this paragraph; and

(6) the transaction will result in an improvement in the ability of any affected railroad to transport passengers or freight.

* * * * * * *

[(j) CONDITIONS OF GUARANTEES.—No guarantee of, and no commitment to guarantee, an obligation may be granted, approved, or extended under this section, unless the obligor first agrees in writing that so long as any principal or interest is due and payable on such obligation—

[(1) there will be no increase in discretionary dividend payments over the average ratio which such payments bore to earnings for the applicable fiscal period during the 5 years preceding such proposed increase, without prior approval of such increase by the Secretary;

[(2) the obligor will not use assets or revenues (other than cash) related to or derived from railroad operations in nonrailroad enterprises, without prior approval in writing from the Secretary; and

[(3) the obligor will take all reasonable and practicable steps possible, in accordance with such guidelines as may be established by the Secretary, to improve the equitable distribution and efficient and expeditious use of all equipment and facilities in order to improve rail service.

Approval under paragraph (1) or (2) of this subsection may only be granted if, after a public hearing with an opportunity for interested persons to submit comments, the Secretary makes a written finding that such increase in dividends (or such use of assets or revenues) will not materially affect the ability of the obligor to comply with the requirements of this section.]

(j) CONDITIONS OF GUARANTEES.—(1) The Secretary shall, before making, approving, or extending any guarantee or commitment to guarantee any obligation under this section, require the obligor to agree to such terms and conditions as are sufficient, in the judgment of the Secretary, to assure that, as long as any principal or interest is due and payable on such obligation, such obligor—

(A) will not make any discretionary dividend payments, except as provided in paragraph (2) of this subsection; and

(B) will not use any funds or assets from railroad operations for nonrail purposes,

if such payments or use will impair the ability of such obligor to provide rail services in an efficient and economic manner or will adversely effect the ability of such obligor to perform any obligation guaranteed by the Secretary.

(2) An obligor shall not be restricted with respect to making dividend payments from its net income for any fiscal year, if such payments do not exceed—

(A) when compared to the net income of such obligor for such fiscal year, the ratio which aggregate dividends paid by such obligor, during the 5 fiscal years prior to the granting of the earliest loan guarantee then outstanding under this section, bore to aggregate net income of such obligor for such period; or

(B) 50 per centum of the total additions to the retained income of such obligor (computed on a cumulative basis and giving cognizance to dividends paid) during the period commencing with the fiscal year prior to the granting of the earliest loan guarantee then outstanding under this section,

whichever is greater.

(3) The restrictions on the payment of dividends set forth in paragraph (1)(A) of this subsection shall not apply with respect to case in which, in the event of a default by such obligor with respect to an obligation guaranteed under this section if, in the event of a default by the obligor, the Secretary would be subrogated to the rights of the lender under section 77(j) of the Bankruptcy Act.

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TITLE VIII—LOCAL RAIL SERVICE CONTINUATION

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CONVERSION OF ABANDONED RAILROAD RIGHTS-OF-WAY

SEC. 809. (a) STUDY.—The Secretary shall, within 360 days after the date of enactment of this Act, and in consultation with the Secretary of the Interior, the Office, the Association, the Environmental Protection Agency, and other appropriate Federal agency, any appropriate State and regional transportation agency, any other appropriate State and local governmental entities, and any appropriate private groups and individuals, prepare and submit to the Congress and the President a report on the conversion of railroad rights-of-way. This report shall evaluate and make suggestsions concerning potential alternate uses of, and public policy with respect to the convention of, railroad right-of-way on which service has been discontinued or is likely to be discontinued. This report shall include—

(1) an inventory statement developed by the Secretary as to all [abandoned] railroad rights-of-way *abandoned since 1970* and significant segments of such rights-of-way which retain their linear characteristics, including, as to each identification of th owner of record and an evaluation of its topography, characteristics, condition, approximate value, and alternate use suitability;

(2) an evaluation of the advantages of establishing a rail bank consisting of selected such rights-of-way, as a means of assuring their availability for potential railrod use in the future, a discussion of interim uses for such rights-of-way, the development of conveyancing and leasing forms, conditions, and practices to assure such availability, a projection as to the costs of such a program, and recommendations regarding the administration of such program;

(3) a survey of existing Federal, State, and local programs utilizing or attempting to utilize abandoned railroad rights-of-way for public purposes, including an assessment of the benefits and costs of each; and

(4) an assessment and evaluation of suggestions for more effective public utilization of abandoned railroad rights-of-way, including recommendations for legislative, administrative, and regulatory action, if any, and proposals as to the optimum level of funding therefor.

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TITLE IX—MISCELLANEOUS PROVISIONS

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SEC. 907. (a) The Secretary shall conduct a comprehensive study of freight transportation in the Midwest. Such study shall include, but not be limited to, a determination to the maximum extent feasible of the impact of changes in the capacity of the lock system of the Mississippi River and Illinois Waterway Navigation System upon—

(1) railroad revenues, service, the ability to attract capital, and continued economic viability;

(2) railroad branch lines;

(3) continued capability to provide service;

(4) shippers depending upon rail service;

(5) communities beyond the economic service area of the waterway mode: and

(6) need for subsidies to railroads.

Such study shall also include a determination of the probable freight to be moved in the Midwest in the next 10 years and the next 25 years, and the most economically efficient method of moving such freight, considering the total private and public costs for the entire region.

(b) The Secretary shall, within one year after the date of enactment of the Rail Amendments of 1976, submit to the Congress the study required by subsection (a) of this section. The Secretary of the Army and the Commission shall cooperate with the Secretary in preparation of such study. In carrying out its duties under this section, the Commission shall submit to the Secretary of the Army the findings of the Commission with respect to whether the expenditure of Federal funds on any construction or reconstruction affecting the capacity of the lock system on the Mississippi River and the Illinois Waterway Navigation System is required to meet the needs of the public convenience and necessity for adequate freight transportation services in the Midwest.

INTERSTATE COMMERCE ACT

* * * * * * *

DISCONTINUANCE AND ABANDONMENT OF RAIL SERVICE

SEC. 1a. (1) No carrier by railroad subject to this part shall abandon all or any portion of any of its lines of railroad (hereafter in this section referred to as 'abandonment') and no such carrier shall discontinue the operation of all rail service over all or any portion of any such line or discontinuance is described in and covered by a certificate which is issued by the Commission and which declares that the present or future public convenience and necessity require or permit such abandonment or discontinuance. An application for such a certificate shall be submitted to the Commission, together with a notice of intent to abandon or discontinue, not less than 60 days prior to the proposed effective date of such abandonment or discontinuance, and shall be in accordance with such rules and regulations as to form, manner, content, and documentation as the Commission may from time to time prescribe. Abandonments and discontinuances shall be governed by the provisions of this section or by the provisions of any other applicable Federal statute, notwithstanding any inconsistent or contrary provision in any State law or constitution, or any decision, order, or procedure of any State administrative or judicial body. *The authority granted to the Commission under this section shall not apply to (a) abandonment or discontinuance with respect to spur, industrial, team, switching, or side tracks if such tracks are located entirely within one State, or (b) any street, suburban, or interurban electric railway which is not operated as part of a general system of rail transportation.*

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(4) The Commission shall, upon an order with respect to each application for a certificate of abandonment or discontinuance—

(a) issue such certificate in the form requested by the applicant if it finds that such abandonment or discontinuance is consistent with the public convenience or necessity. In determining whether the proposed abandonment is consistent with the public convenience and necessity, the Commission shall consider whether there will be a serious adverse impact on rural and community development by such abandonment or discontinuance;

(b) refuse to issue such certificate.

Each such certificate which is issued by the Commission shall contain provisions for the protection of the interests of employees. Such provisions shall be at least as beneficial to such interests as provisions established pursuant to section 5(2)(f) of this Act and pursuant to section 405 of the Rail Passenger Service Act (45 U.S.C. 565). *If such certificate is issued without an investigation pursuant to paragraph (3) of this section, actual abandonment or discontinuance may take effect, in accordance with such certificate, on the effective date of such certificate.* If such a certificate is issued *after an investigation pursuant*

to such paragraph (3), actual abandonment or discontinuance may take effect, in accordance with such certificate, 120 days after the date of issuance thereof.

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COMBINATIONS AND CONSOLIDATIONS OF CARRIERS

SEC. 5. (1) * * *

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(16) Jurisdiction is hereby confered on the Commission to determine questions of fact, arising under paragraph (15), as to the competition or possibility of competition, after full hearing, on the application of any railroad company or other carrier. Such application may be filed for the purpose of determining whether any existing service is in violation of such paragraph and may pray for an order permitting the continuance of any vessel or vessels already in operation, or may pray for an order under the provisions of paragraph [16] *(17)*. The Commission may on its own motion or the application of any shipper institute proceedings to inquire into the operation of any vessel in use by any railroad or other carrier which has not applied to the Commission and had the question of competition or the possibility of competition determined as herein provided. In all such cases the order of said Commission shall be final.

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AGREEMENTS BETWEEN CARRIERS SUBJECT TO PART I

SEC. 5b. (1) * * *

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(5) (a) The Commission shall not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consideration, unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action, without fear of any sanction or retaliatory action, at any time before or after any determination arrived at through such procedure. In no event shall any conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under the provisions of this section—

(i) permit participation in agreements with respect to, or any voting on, single-line rates, allowances, or charges established by any carrier;

(ii) permit any carrier to participate in agreements with respect to, or to vote on, rates, allowances, or charges relating to any particular interline movement, unless such carrier can practicably participate in such movement; or

(iii) permit, provide for, or establish any procedure for joint consideration or any joint action to protest or otherwise seek the suspension of any rate or classification filed by a carrier of the same mode pursuant to section 15[7] *(8)* of this part where such rate or classification is established by independent action.

As used in clause (i) of this subdivision, a single-line rate, allowance, or charge is one that is proposed by a single carrier applicable only over its own line and as to which the service (exclusive of terminal services provided by switching, drayage, or other terminal carriers or agencies) can be performed by such carrier.

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COMPLAINTS TO AND INVESTIGATIONS BY COMMISSION

SEC. 13. (1) * * *

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(5) The Commission shall have exclusive authority upon application to it, to determine and prescribe intrastate rates if—

(a) a carrier by railroad has filed with an appropriate administrative or regulatory body of a State, a change in an intrastate rate, fare, or charge, or a change in a classification, regulation, or practice that has the effect of changing such a rate, fare, or charge, for the purpose of adjusting such rate, fare, or charge to the rate charged on similar traffic moving in interstate or foreign commerce; and

(b) the State administrative or regulatory body has not, within 120 days after the date of such filing, acted finally on such change.

Nothing in this paragraph shall affect the authority of the Commission to institute an investigation or to act in such investigation as provided in paragraphs (3) and (4) of this section.

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DETERMINATION OF RATES ROUTES, ETC.; ROUTING OF TRAFFIC; DISCLOSURES, ETC.

SEC. 15. (1) * * *

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(19) Notwithstanding any other provision of law, a common carrier by railroad subject to this part may file with the Commission a notice of intention to file a schedule stating a new rate, fare, charge, classification, regulation, or practice whenever the implementation of the proposed schedule would require a total capital investment of $1,000.000 or more, individually or collectively, by such carrier, or by a shipper, receiver, or agent thereof, or an interested third party. The filing shall be accompanied by a sworn affidavit setting forth in detail the anticipated capital investment upon which such filing is based. Any interested person may request the Commission to investigate the schedule proposed to be filed, and upon such request the Commission shall hold a hearing with respect to such schedule. Such hearing may be conducted without answer or other formal pleading, but reasonable notice shall be provided to interested parties. Unless, prior to the 180-day period following the filing of such notice of intention, the Commission determines, after a hearing, that the proposed schedule, or any part thereof, would be unlawful, such carrier may file the schedule at any time within 180 days thereafter to become

effective after 30 days' notice. Such a schedule may not, for a period of 5 years after its effective date, be suspended or set aside as unlawful under section *1*, 2, 3, or 4 of this part, except that the Commission may at any time order such schedule to be revised to a level equalling the variable costs of providing the service, if the rate stated therein is found to reduce the going concern value of the carrier.

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COMMISSION PROCEDURE; DELEGATION OF DUTIES; REHEARINGS

SEC. 17. (1) * * *

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(9) (a) * * *

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(e) The Commission may, in its discretion, extend any time period set forth in this [section] *paragraph* for a period of not more than 90 days, if a majority of the Commissioners, by public vote, agree to such extension. The Commission shall submit an annual report in writing to each House of Congress setting forth each extension granted pursuant to this subdivision (classified by the type of proceeding involved), and stating the reasons for each such extension and the duration thereof.

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RESTRICTIONS

SEC. 22 (1) * * *

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(2) All quotations or tenders of rates, fares or charges under paragraph (1) of this section for the transportation, storage, or handling of property or the transportation of persons free or at reduced rates for the United States Government, or any agency or department thereof, including quotations or tenders for retroactive application whether negotiated or renegotiated after the services have been performed, shall be in writing or confirmed in writing and a copy or copies thereof shall be submitted to the Commission by the carrier or carriers offering such tenders or quotations in the manner specified by the Commission and only upon the submittal of such a quotation or tender made pursuant to an agreement approved by the Commission under section 5a *or section 5b* of this Act shall the provisions of paragraph (9) of [*said*] *such* section 5a *or paragraph (8) of such section 5b* apply, but said provisions shall continue to apply as to any agreement so approved by the Commission under which any such quotation or tender (a) was made prior to the effective date of this paragraph or (b) is hereafter made and for security reasons, as hereinafter provided, is not submitted to the Commission: *Provided*, That nothing in this paragraph shall affect any liability or cause of action which may have accrued prior to the date on which this paragraph takes effect. Submittal of such quotations or tenders to the Commission shall be made concurrently with submittal to the United States

Government, or any agency or department thereof, for whose account the quotations or tenders are offered or for whom the proposed services are to be rendered. Such quotations or tenders shall be preserved by the Commission for public inspection. The provisions of this paragraph requiring submissions to the Commission shall not apply to any quotation or tender which, as indicated by the United States Government, or any agency or department thereof, to any carrier or carriers, involves information the disclosure of which would endanger the national security.

* * * * * * *

DISCRIMINATORY STATE TAXATION

SEC. 28. (1) Notwithstanding the provisions of section 202(b), any action described in this subsection is declared to constitute an unreasonable and unjust discrimination against, and an undue burden on, interstate commerce. It is unlawful for a State, a political subdivision of a State, or a governmental entity or person acting on behalf of such State or subdivision to commit any of the following prohibited acts:

(a) The assessment (but only to the extent of any portion based on excessive values as hereinafter described), for purposes of a property tax levied by any taxing district, of transportation property at a value which bears a higher ratio to the true market value of such transportation property than the ratio which the assessed value of all other commercial and industrial property in the same assessment jurisdiction bears to the true market value of all such other commercial and industrial property.

(b) The levy or collection of any tax on an assessment which is unlawful under subdivision (a).

(c) The levy or collection of any ad valorem property tax on transportation property at a tax rate higher than the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction.

(d) The imposition of any other tax which results in discriminatory treatment of a common carrier by railroad subject to this part.

(2) Notwithstanding any provision of section 1341 of title 28, United States Code, or of the constitution or laws of any State, the district courts of the United States shall have jurisdiction, without regard to amount in controversy or citizenship of the parties, to grant such mandatory or prohibitive injunctive relief, interim equitable relief, and declaratory judgments as may be necessary to prevent, restrain, or terminate any acts in violation of this section, except that—

(a) such jurisdiction shall not be exclusive of the jurisdiction which any Federal or State court may have in the absence of this subsection;

(b) the provisions of this section shall not become effective until 3 years after the date of enactment of this section;

(c) no relief may be granted under this section unless the ratio of assessed value to true market value, with respect to transportation property, exceeds by at least 5 per centum the ratio of assessed value to true market value, with respect to all other commercial and industrial property in the same assessment jurisdiction;

(d) the burden of proof with respect to the determination of assessed value and true market value shall be that declared by the applicable State law; and

(e) in the event that the ratio of the assessed value of all other commercial and industrial property in the assessment jurisdiction to the true market value of all such other commercial and industrial property cannot be established through the random-sampling method known as a sales assessment ratio study (conducted in accordance with statistical principles applicable to such studies) to the satisfaction of the court hearing the complaint that transportation property has been or is being assessed or taxed in contravention of the provisions of this section, then the court shall hold unlawful an assessment of such transportation property at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other property in the assessment jurisdiction in which is included such taxing district and subject to a property tax levy bears to the true market value of all such other property, and the collection of any ad valorem property tax on such transportation property at a tax rate higher than the tax rate generally applicable to taxable property in the taxing district.

(3) As used in this section, the term—

(a) "assessment" means valuation for purposes of a property tax levied by any taxing district;

(b) "assessment jurisdiction" means a geographical area, such as a State or a county, city, township, or special purpose district within such State which is a unit for purposes of determining the assessed value of property for ad valorem taxation;

(c) "commercial and industrial property" or "all other commercial and industrial property" means all property, real or personal, other than transportation property and land used primarily for agricultural purposes or primarily for the purpose of growing timber, which is devoted to a commercial or industrial use and which is subject to a property tax levy; and

(d) "transportation property" means transportation property, as defined in regulations of the Commission, which is owned or used by a common carrier by railroad subject to this part or which is owned by the National Railroad Passenger Corporation.

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SEPARATE VIEWS TO H.R. 14932 BY HON. JOE SKUBITZ

H.R. 14932 is in no way legislation vital to the health of the railroad industry. However, as a result of careful deliberation by the full Committee, the bill does make some substantive and clarifying changes in existing law which will hopefully improve its operation. In particular, the amendments contained in this bill reaffirm the initial policies adopted by Congress and embodied in Public Law 94–210, the Railroad Revitalization and Regulatory Reform Act of 1976. This reformation and clarification should clear up some court orders and some proposed rulemaking which failed to carry out the intent of Public Law 94–210.

I continue to have reservations concerning one amendment adopted in Committee. That amendment added a new Sec. 105 to the bill titled "Protection of Employees' Pension Benefits." This is a humanitarian amendment but it establishes a dangerous and unwise precedent for the Government. Simply stated, it requires Uncle Sam to pay pension benefits to a number of retired employees of several bankrupt railroads formerly operating in the Northeast. At present, there are 908 individuals receiving special retirement benefits from their former employers. These benefits are benefits over and above Railroad Retirement and are the result of special unfunded pension plans. The following list indicates those unfunded employee pension benefit plans which were terminated as of August 1, 1976 inasmuch as CONRAIL has no obligation to continue payment.

1. Policy of Interim Pensions, Penn Central Transportation Company, of February 1, 1968, as amended to April 8, 1974 (plan established March 1, 1963 by Pennsylvania Railroad Company).
2. Policy of Interim Pensions, Penn Central Transportation Company, of February 1, 1968 (plan established May 28, 1959 by New York Central Railroad Company).
3. Plan for Supplemental Pensions, Penn Central Transportation Company, of January 1, 1969 (plan established January 31, 1951 by New York, New Haven and Hartford Railroad Company, and amended to October 25, 1961).
4. Plan for Additional Pension Allowances for Employees in Canada, Penn Central Transportation Company, of April 25, 1968, as amended to February 3, 1972.
5. The Delaware, Lackawanna and Western Railroad Company Pension Plan (effective October 1, 1941).
6. The Delaware, Lackawanna and Western Railroad Company Unfunded Pension Plan (effective January 1, 1956).
7. The Delaware, Lackawanna and Western Railroad Company Funded Pension Plan (effective January 1, 1956).
8. Early Retirement Policy, approved by Erie Lackawanna Railway Company Board of Directors (effective July 1, 1971).

9. Erie Lackawanna Board of Directors' resolution adopted October 17, 1960, on merger of Erie Railroad and Delaware, Lackawanna and Western Railroad Company, providing credit for prior railroad service to named officers and employees of DL & W in accordance with provisions of plan identified as No. 7 above.

10. Subsequent Erie Lackawanna Board of Directors' and Trustees' resolutions adopted at various times providing credit for prior railroad service to certain officers and employees in connection with their becoming employed.

11. Pension provisions made at various times by Erie Lackawanna for specific officers or employees or, in some cases, their widows.

12. Lehigh and Hudson Policy of Interim Pensions adopted November 17, 1966.

13. Lehigh and Hudson 1956 Unfunded Supplemental Pension Plan.

14. Lehigh Valley 1944 Unfunded Supplemental Pension Plan.

Naturally, the estates of the bankrupt railroads involved have an obligation to pay these pension benefits. I am optimistic that the reorganization court will do all in its power to see that the 908 individuals involved receive their supplemental pension benefits. Quite frankly, if I could see any justification for the United States to take over the rightfully obligations of the bankrupt railroads in this matter, I would endorse the provision. Unfortunately, I cannot. What I do see is the beginning of what could be a long line of bailouts by the Federal Government for all bankrupt estates ranging from the W. T. Grant Company to the corner service station.

Many companies including the bankrupt railroads in the Northeast enter into special pension plans with their employees. In some cases, the employees contribute to the pension plan and others where the employer pays the full cost. In recent years, it has been necessary for such pension plans to meet certain qualifications so as to assure payment of funds to future beneficiaries. In this case, the employers assume the responsibility to pay the supplementary benefits when an employee retired. Unfortunately, the companies involved have gone bankrupt. As with any other bankruptcy, it is incumbent upon the reorganization court to arrive at the best resolution possible with respect to unfunded pension liabilities.

It is my understanding that in each of the 14 plans involved, there was a termination clause which provided for the very contingency which now exists. Under the termination clause, the court should be able to provide the retirees with a fair and equitable settlement.

Sec. 105 of this bill represents unsound public policy and should be stricken.

J. SKUBITZ.

SEPARATE VIEWS OF REPRESENTATIVE JOHN M. MURPHY WITH RESPECT TO H.R. 14932

It was originally intended that section 107 of the subcommittee draft of June 1976 would be included in the final version of H.R. 14932 since that section dealt with the question of rail service in the "southern tier" section of New York State. After hearings were held on June 26, 1976 in Elmira, New York the Subcommittee Chairman, Mr. Rooney, indicated his belief that specific legislation regarding a private line purchase of the southern tier lines would be unnecessary. ConRail officials had formally indicated their intention to maintain service in New York's southern tier.

Since the chairman of the subcommittee had also indicated his desire to include language in the report which would indicate why the subcommittee deliberately omitted provisions regarding the New York Lines, and since the deletion of the entire section in full committee markup preempted discussion of that question in the body of the report itself. I am hereinafter including the language which would have appeared in the report had section 107 survived markup. I am also including copies of correspondence with Chairman Rooney which outlines the commitments made by ConRail at the June hearing.

This bill, and its predecessors, are first and foremost rail service continuation measures, and the representatives of New York intend to hold ConRail to its public assertion of support for that proposition, as articulated to, and through, Chairman Rooney.

JOHN M. MURPHY.

"The Subcommittee recognizes that many areas of the Region had been anticipating major capital investments and service improvements from the Chessie System and that in approving the Final System Plan it was the intent of Congress that these services be enhanced and protected as part of the Federal reorganization effort. Section 107 of H.R. 14932 has been introduced to try to achieve these ends. However, in place of legislation the Subcommittee has received the following assurances from ConRail; it is the Subcommittee's intent that each of these assurances be met:

1. All of the properties of the Erie-Lackawanna in New York formerly designated to be included in Chessie and now part of the ConRail System have been found to be vital and profitable segments of ConRail;

2. ConRail plans to operate the former Erie-Lackawanna mainline Jamestown-Hornell-Binghamton-Port Jervis-Suffern and its connections to the West and East as principal mainlines of the ConRail system with maintenance and traffic densities no less than 25 million gross ton miles per mile;

3. ConRail recognizes that the South Dayton-Waterboro, Bath-Corning, Buffalo-Hornell, Binghamton-Fulton, Binghamton-Utica, Fair Oaks-Middletown and Graham Line are profitable feeders to the

former Erie-Lackawanna mainline and, as such, will be maintained at the best practical maintenance standard but in no case less than adequate to meet FRA's Class II safety standard; and

4. ConRail recognizes that it has 'market dominance,' as that term is used in the Railroad Revitalization and Regulatory Reform Act, over all these properties and all traffic moved to or from these lines and the Port of New York and New Jersey and that ConRail will reflect carefully its monopoly position in each of these areas in any rate actions it may take in the future."

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., July 30, 1976.

Hon. JOHN M. MURPHY,
Rayburn House Office Building,
Washington, D.C.

DEAR JACK: This is in response to your inquiry regarding Section 107 (Acquisition Proposals) contained in H.R. 14932 ("Rail Amendments of 1976") which I introduced July 28. This provision would amend Title III of the Regional Rail Reorganization Act of 1973 by adding a new section to permit the acquisition of certain rail properties conveyed to ConRail by a State or a profitable railroad. In particular, you are concerned as to the effect this provision would have on the former Erie Lackawanna and Reading property in the New York Southern Tier counties.

The original staff draft, dated June 10, 1976, of the Rail Amendments of 1976 contained a provision whereby basically any State, responsible person, or profitable railroad operating in the region could, within one year, acquire any of the rail properties which were designated in the final system plan to be offered for sale to a profitable railroad operating in the region, but which were subsequently transferred to ConRail. Upon review, it was found that the general broadness of this provision made it undesirable and possibly unconstitutional. I therefore decided that this provision should be limited to rail properities in the Delmarva peninsula.

As you know, I too am concerned for the quality of service to shippers in the Southern Tier. In view of the fact that this rail property was conveyed to ConRail rather than the Chessie System as contemplated by the final system plan, there was a serious question as to the effect this lack of competitive service originally envisioned would have on the shippers in the area. In this regard thorough consideration was given to your bill (H.R. 13138) providing for the reconveyance of the Southern Tier rail property from ConRail to a State or group of States. Public hearings on this bill were held in Elmira, New York, on June 26. Based on these hearings, and other information received by the Subcommittee, it was concluded that the Southern Tier rail properties should remain with ConRail.

During the hearings Edward G. Jordan, Chairman of ConRail, testified that ConRail had already awarded contracts amounting to $20 million for track rehabilitation, $18 million for freight car and locomotive repairs, $1 million for rail welding, and $3 million for other capital improvements—a total of $42 million. In addition, it was stated that once ConRail was certain that it would retain the properties a five year plan would be prepared indicating additional improvements

to be undertaken. ConRail further reassured the Subcommittee that the service in the area would not be downgraded. With the exception of the totally unprofitable piggyback facilities, the shippers are and will continue to receive service equal or better than that provided by the former operators.

It was also brought out in the hearings that reconveyance of the properties from ConRail would cause considerable harm to ConRail and employees. Since ConRail commenced operations in April, some facilities have been closed and others expanded, some personnel have been transferred to different locations in the ConRail system, and others declared surplus, and tariffs and rate divisions have been changed. To reverse these actions would cause considerable hardship on employees and result in large financial losses to ConRail, both of which would have to be compensated by the new operator. Also, as a representative of the Chessie System testified, a considerable amount of the through traffic has been diverted to other ConRail routes and it is doubted if a sizable portion of this traffic could be recovered by another operator of this route. Thus, it is doubtful if the properties would be financially viable for a new operator.

The Subcommittee was also informed that further efforts to reconvey the Southern Tier properties would lead to significant legal problems. ConRail's rights as a private corporation were the main consideration underlying the carefully tailored procedures spelled out for supplemental transactions in Section 305 of the Rail Act. H.R. 13138 does not contain these necessary safeguards. Absent these safeguards, reconveyance could be declared unconstitutional or deemed an act of condemnation. If those safeguards were included, then the price of a transfer requested by a State would not be measured by the acquisition cost to ConRail but by the impact of the transaction on ConRail's future prospects.

H.R. 13138 would also leave uncertain the fate of the Delaware and Hudson, a small railroad recently enlarged and strengthened so as to provide competitive service in the New York and New England areas and in which the Federal government will have invested $23 million by the end of this year. H.R. 13138 does not specify what would happen to the D. & H.'s interest in the ConRail properties. In any event, the D. & H. would either lose those property interests or face additional head-to-head competition in its major markets.

Moreover, the reconveyance envisioned by H.R. 13138 could impact adversely the valuation litigation now pending before the Special Court. The Rail Act, including Section 305, was carefully drafted to create a reorganization process pursuant to the bankruptcy and commerce powers with only minimal reliance upon the power of eminent domain. That is the context within which the Special Court appears to be approaching the valuation litigation and that is the basic position which the government parties have been advocating.

One issue in the case is whether ConRail is in fact a private corporation with the normal rights and attributes of such a corporation or is instead a federal creature. If ConRail is perceived to be a corporation entirely dependent upon federal funding which the government can and does manipulate freely, then the Special Court may alter its view and approach the Rail Act as primarily a condemnation statute and only secondarily, if at all, as a reorganization process. Enactment of legislation which evidences a willingness by the Congress to treat

ConRail as a federal creature, subject to the political process in a much greater degree than other railroads would be harmful to the government's litigation efforts.

Also, I would like to take this opportunity to respond to inquiries by the New York Department of Transportation and members of the New York Congressional delegation regarding status of marine operations in New York Harbor. It has been suggested that a provision be included in H.R. 14932 making it explicitly clear that marine operations, equipment and facilities in New York Harbor are included in the coverage of the 1973 Act.

It is my understanding that it has always been the Congressional intent that the marine operations in New York Harbor be covered by the 1973 Act and consequently the equipment and facilities not be disposed of by the estates and the operations be eligible continuation payments. This understanding was confirmed by a recent ruling that the marine operations are "services by railroad" within the meaning of the Interstate Commerce Commission, and that the facilities are "rail properties" as defined by the Act. The ICC also ordered that the carfloat properties be made available by the estate to designated operators for the performance of transportation services under rail service continuation payments. In addition, it ruled that the properties may not be disposed of by the estate so long as they are required for the performance of marine service. Accordingly, I believe that this ruling provides the legislative clarification desired and that further amendments to the Act are not required.

Please do not hesitate to contact me if you need additional information or if I can be of assistance.

Best personal regards,

Sincerely,

FRED B. ROONEY,
Chairman, Subcommittee on Transportation and Commerce.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., August 2, 1976.

Hon. JOHN M. MURPHY,
Rayburn House Office Building,
Washington, D.C.

DEAR JACK: In confirmation of our conversation today regarding my letter to you dated July 30, be assured that the information contained in my letter will be included in the Committee report on H.R. 14932. I agree with you that in order to show a complete legislative history of the section pertaining to acquisition proposals it will be necessary to explain why the eligible properties are limited to those in the Delmarva Peninsula. Thus, it will be necessary to explain the consideration given to the properties in the Southern Tier and the commitment given by ConRail regarding the improvements to be made and the service to be provided as explained in my letter.

Kind personal regards,

Sincerely,

FRED B. ROONEY,
Chairman, Subcommittee on Transportation and Commerce.

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